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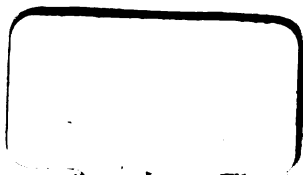
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C#

A MANUAL OF PROCEDURE

THE LAW
OF
CONDITIONAL SALES

CONTAINING

**The Essential Features of the Laws Governing Con-
ditional Sales in Every State and Territory
of the United States; also Approved
Forms for Conditional Con-
tracts of Sale, Ac-
knowledgments,
etc., etc.**



By
FRED BENSON HARING
of the Buffalo Bar

New York
The Ronald Press
1907

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To the Cary Safe Company of Buffalo, New York, with whom my relations have been so long and so pleasantly maintained, I dedicate this book.

FRED BENSON HARING.

PREFACE.

The question as to what credit should be extended is perhaps the most important one connected with business transactions. It must necessarily be given by every business house whether large or small. The personal obligation of a buyer is often not sufficient to justify a delivery of goods to him which are to be paid for in the future, and some additional security must be obtained or the order be rejected. In such case title is sometimes passed and a chattel mortgage taken as security, but more often than otherwise the purchaser absolutely refuses to give such an instrument, on the ground that it is detrimental to his credit. To meet these conditions there has grown up the custom of retaining a lien or title in the goods sold until the purchase price is paid. Such an arrangement is known as a conditional sale and is one of the safest possible methods of securing payments due in the future.

When taking charge of the legal department for a large corporation doing much of its business under conditional contracts of sale, the author realized the necessity of knowing, even before the acceptance of an order, just what steps could and should be taken to preserve the vendor's title as against the vendee's misfortune or dishonesty. To meet this need he prepared a systematic statement of the law and procedure of conditional sales for every state in the Union. The results of his labors are embodied in the present volume.

Every business house employing conditional contracts of sale must of necessity have more or less of this information, but in most cases it is not complete for every state nor is it systematized or in form to be readily available. The author therefore believes that a comprehensive, and systematic state-

ment such as he has endeavored to give in the present work will be found of value.

The arrangement of the volume is simple. A few general rules or axioms which govern such transactions are first presented. Following these is a statutory classification of the various states based on the similarity of their laws affecting conditional sales. Next is a condensed paragraph statement of the law of conditional sales for every state and territory of the Union, with alphabetical arrangement of the states. Then comes the main body of the work. Here the states are again taken up in alphabetical order and the laws and requirements as to conditional sales are set forth under uniform headings and in detail. Citations are given and where the laws of any state make it necessary, the forms of acknowledgments, affidavits, etc., of that particular state are also included. Following each state blank pages have been left for private annotations, or for amendments or additions to the law. In the latter part of the volume will be found a number of forms of contracts which may serve as precedents. These are approved forms which have stood the test of time.

The present work is offered with the hope that the busy credit man and lawyer may find its pages at least helpful in answering the many vexing questions which arise where conditional contracts of sale form the basis of transactions submitted to them for determination.

FRED BENSON HARING.

Buffalo, New York,

June 15, 1907.

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LIST OF STATES AND TERRITORIES INCLUDED.

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| 1. Alabama. | 26. Montana. |
| 2. Arizona. | 27. Nebraska. |
| 3. Arkansas. | 28. Nevada. |
| 4. California. | 29. New Hampshire. |
| 5. Colorado. | 30. New Jersey. |
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| 7. Delaware. | 32. New York. |
| 8. District of Columbia. | 33. North Carolina. |
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| 10. Georgia. | 35. Ohio. |
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| 15. Iowa. | 40. South Carolina. |
| 16. Kansas. | 41. South Dakota. |
| 17. Kentucky. | 42. Tennessee. |
| 18. Louisiana. | 43. Texas. |
| 19. Maine. | 44. Utah. |
| 20. Maryland. | 45. Vermont. |
| 21. Massachusetts. | 46. Virginia. |
| 22. Michigan. | 47. Washington. |
| 23. Minnesota. | 48. West Virginia. |
| 24. Mississippi. | 49. Wisconsin. |
| 25. Missouri. | 50. Wyoming. |

OUTLINE.

The outline given below is followed in the treatment of each state, the titles and their order being the same in every case as far as possible.

1. Legal Status of Conditional Contracts of Sale.
2. How Executed.
3. Acknowledgment or Proof.
4. Recording or Filing.
5. Recording Fee.
6. Re-recording or Renewal.
7. Discharge.
8. Landlord's Lien.
9. Criminal Liability of Vendee for Disposal of Property.
10. Money Judgment or Replevin.
11. Fixtures.
12. When Vendor or Vendee Loses.
13. General Remarks.
14. Forms. (Acknowledgments, Proofs, Affidavits, Certifications, Forms of Discharge, etc.)

CONDITIONAL SALES.

PART I.

INTRODUCTORY.

Conditional contracts of sale are valid as between the original parties thereto without recording or filing, in every state and territory.

Recording or filing a conditional contract of sale is only necessary to protect the vendor's or seller's title as against third parties, who otherwise might secure some right or interest in the property, *without knowledge* of the existing contract. Its effect is ordinarily to give legal notice to third parties of the real ownership of the property involved, thereby preventing buyers from disposing of property which does not belong to them, or preventing its sale under judicial process to pay these buyers' debts.

Conditional contracts of sale, if properly executed and recorded or filed as the law provides, are an absolute protection to the vendor or seller as against nearly all third parties until the goods are paid for. The only exceptions arise (a) where the vendee or buyer is engaged in the business of selling such articles, or using them in the course of manufacturing or in some other way, by which they must necessarily be consumed or destroyed or lose their identity, (b) in some instances where the articles become firmly attached to real property and cannot be removed without material damage to such articles or to such real property,

(c) in the states of Illinois and Pennsylvania where conditional sales are not recognized if the rights of third parties intervene even though the contracts of sale be recorded or filed, and (d) in some few states where the courts have held that destruction of the property before full payment relieves the vendee from further liability.

The distinction between recording and filing conditional contracts of sale should be observed. The object to be attained is the same—notice to third parties. A contract in order to be recorded, must be copied, word for word, into a book kept by the recording officer and the names of the parties must be indexed, for which service a charge is made according to the length of the contract. The filing of the same contract only requires that the paper or a copy thereof shall be placed in the keeping of the proper officer and that he shall index the names of the parties to such contract for ready reference. The fees for filing are only nominal, and do not depend upon the length of the contract. Very few contracts can be drawn briefly enough to keep the recording fee under \$1.00, while a filing fee in most instances will not exceed 25 cents. Whether any particular contract should be recorded or filed, will usually be settled by the laws obtaining in the state in which the property to be protected is held after delivery to the vendee.

Many states only require that a contract of conditional sale shall be in writing and properly signed to be valid as to all parties. Others while requiring that the contract be recorded or filed to be valid, provide that if a contract be in writing and properly signed, it may be recorded or filed without the necessity of securing the vendee's acknowledgment or having the instrument signed or proven by a subscribing witness. Still others require that the contract must be acknowledged by the vendee or vendor or be signed or proven by one or more subscribing witnesses in the same manner as a deed of real estate before it can be recorded or filed. In some states the law is not settled as to what is necessary in the way

of acknowledgment or proof before a contract of conditional sale can be recorded or filed. In others such a contract is not recognized in law when the rights of third parties intervene, even though the same be executed and recorded with the same formality as a deed of real estate. Renewal or refileing after a certain period is necessary in many instances, and some states require that a contract shall be discharged from record after payment, and assess a penalty on the vendor for a failure to discharge.

As has already been said, in some of the states where conditional contracts of sale must be filed or recorded in order to be valid as to third parties, formal verification of the instrument is a prerequisite. In a few states this verification must be in the form of an acknowledgment by the vendee and the instrument will not be received for filing or recording unless it is so acknowledged. In most of the states, however, where verification is required, the laws provide that the contract may be either acknowledged by the vendee or proven by a subscribing witness. If, then, the vendee objects to or refuses acknowledgment of the instrument, as is sometimes the case, recourse may be had to proof by a subscribing witness and the instrument so proven may be filed or recorded without the vendee's acknowledgment and even without his knowledge that the instrument has been placed on record. Under these conditions, proof by a subscribing witness becomes at times a very important matter, and for this reason the method and requirements of such proof have been set forth in the text of the present volume with much particularity.

In the matter of the criminal liability of vendee for disposal of property—one of the subject headings of the present volume—it may be said that the status of property held under conditional contract of sale is peculiar. The title to such property remains in the vendor but notwithstanding this, the vendee's first payment gives him an interest in the property and this interest increases with every payment made. In

other words, while the legal title remains in the vendor, the vendee, if any payments have been made, has an equity in the property, and for this reason if he should make way with the property it would not be held a crime under the usual penal statutes. This is also true where property held under chattel mortgage is sold in defiance of the rights of the mortgagee. In many of the states the matter has been provided for by special laws which make the disposal of property held under chattel mortgage or conditional contract of sale a crime. All such laws as far as they apply to conditional sales have been specifically set forth in the present volume. If, therefore, in the discussion of any particular state no mention is made of laws forbidding the disposal of property conditionally sold, it will be understood that no such laws exist in that state, and should a vendee in one of these states dispose of such property, a civil action for damages is usually the only legal proceeding possible as against him.

Where special laws make the sale, removal, secreting or mortgaging of conditionally sold property a crime, these laws will of course act directly to deter the vendee from taking any such action with regard to the property. Or, if the property is disposed of notwithstanding these laws, they afford a means of bringing pressure for payment to bear upon the vendee. So far these laws are of direct advantage to the vendor. His best protection is, however, in all cases his lien upon the property itself, and for this reason the author has given special prominence in the present volume to the methods to be followed and the formalities to be observed to secure to the vendor the strongest possible lien,—a lien so far-reaching that even should such property be disposed of to an innocent purchaser for value it may be followed and recovered from the purchaser's hands.

When a vendee fails in payments required by a conditional contract of sale, the vendor, if unable to collect, will usually wish to repossess himself of the property. In some

states this is not permissible, the laws providing that the property must be sold, the vendor looking to the proceeds of such sale for his relief. In other states the property may be taken possession of by prescribed methods. In many states, however, no specific provision is made for repossession when payments fail, nor are the respective rights and relations of the vendor and vendee clearly defined. In these states it may be said that as a general rule upon default in the contract payments or upon the failure of the vendee to perform any other of the contract conditions, the vendor may, if he can, repossess himself of the property without legal process and with scant formality of any kind. If, however, the vendee opposes such an informal taking of the property, the vendor cannot forcibly assert his rights even though so specified in the contract, but must secure possession by legal action, usually by replevin of the property or a foreclosure of the lien.

In the digest of the laws of the various states as given in the present volume the method of repossession or of procedure in event of the failure of contract payments or of other contract conditions is given in detail where prescribed by the statute law. In the states where such procedure is not given it will be understood that the laws are silent as to the method of repossession and that the vendor must—if an informal repossession of the property is resisted by the vendee—proceed by civil action.

In those states where no statute laws prescribe the rights of vendor and vendee, when property conditionally sold is to be repossessed by civil action, the courts have sought to do equity by allowing the vendee a repayment of the money already paid in, less a reasonable rental for the use of the property while in his possession with a fair allowance to the vendor for damages if the property has been broken or otherwise injured by the vendee to a greater extent than is consistent with ordinary wear and tear. To avoid this com-

plication most contracts contain an express forfeiture clause by which all payments made by the vendee are to be retained by the vendor as rent for the use of the property in case of its repossession.

The status of conditionally sold property which has been attached to a building, is given in the present volume under the head of "Fixtures" as far as determined by statute law or by court decisions. In some states, however, the matter is not covered by statute law and has not been established by court decisions. In these states it is impossible to predict with any certainty what the holdings of the courts will be should the matter come up, because of the irreconcilable divergences of existing decisions in the various states. This being true, it would be prudent for the vendor when drawing a contract of sale for any state in which this matter is not settled, to make specific provision for the status of the property if it is to be attached to a building. Such provision if agreed to by the vendee would undoubtedly be effective as between the parties to the agreement. It would also probably be sufficient as to third parties, if the contract of sale is duly filed or recorded.

PART II.

STATUTORY CLASSIFICATION OF STATES.

In the statutory classification of states which follows, the various states are grouped according to the similarity, as to essential features, of their laws governing conditional sales.

CLASS I.

States where conditional contracts of sale do not need to be recorded or filed, or acknowledged by any one, or be signed or proven by a subscribing witness to hold title.

ARKANSAS,	(Except for railroad equipment).
CALIFORNIA,	
DELAWARE,	(Except landlord for rent).
DISTRICT OF } COLUMBIA, }	{ (Where contract is not more than \$100.00). (Except landlord for rent).
IDAHO,	
INDIANA,	(Except for railroad equipment).
LOUISIANA,	(Status doubtful. See "Louisiana" under Classified Statement.) (Except landlord for rent).
MASSACHUSETTS,	(Except for railroad equipment).
MICHIGAN,	(Except for railroad equipment).
MISSISSIPPI,	(Except landlord for rent). (Except where vendee shall transact business otherwise than in his own name and fail to disclose his prin- cipal or partner by a sign, or in his own name, without similar disclosure of an existing partner).

(CLASS I—Continued.)

NEVADA,	
NEW MEXICO,	
OREGON,	(Except for railroad equipment).
RHODE ISLAND,	
TENNESSEE,	(Except for railroad equipment).
UTAH,	(Except for railroad equipment).

CLASS II.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties, but need not be acknowledged by any one, or be signed or proven by a subscribing witness in order to be so recorded or filed.

ALABAMA,	(Except for railroad equipment).
ARIZONA,	
KANSAS,	
MAINE, -	(Except for railroad equipment).
MINNESOTA,	
MONTANA,	
NEBRASKA,	(Affidavit of vendor must be attached).
NEW YORK,	(Except for railroad equipment).
OHIO,	(Affidavit of vendor must be attached).
TEXAS,	(Except for railroad equipment).
VERMONT,	
VIRGINIA,	(Must be signed by vendee and vendor).
	(Except for railroad equipment).
WASHINGTON,	(Must be signed by vendee and vendor).
	(Except for railroad equipment).

(CLASS II—Continued.)

WEST VIRGINIA,	(Except for railroad equipment).
WISCONSIN,	(Must be signed by vendee and vendor).
WYOMING,	(Affidavit of vendor must be attached).
	(Except for railroad equipment).

CLASS III.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties, and must be acknowledged by vendee, or be signed or proven by a subscribing witness in order to be recorded or filed.

FLORIDA,	Contract is good for two years against all parties without recording. Can then be recorded, if signed and proven by one subscribing witness, except for railroad equipment.
GEORGIA,	Contract must be signed and proven by one subscribing witness and recorded within forty days after delivery of the property.
INDIAN TERRITORY,	Not definitely settled but contract probably good without recording or filing or proof by a subscribing witness. Most United States District Court Clerks or their deputies will file without acknowledgment by party, or signing or proof by subscribing witness, but some refuse to file unless acknowledged by vendee or proven by witness. It is best to secure the subscribing witness if possible when no questions can arise.

(CLASS III—Continued.)

KENTUCKY,	Contract must be signed by two subscribing witnesses, be proven by one and be recorded.
MISSOURI,	Contract must be signed by one subscribing witness and be recorded or filed, except for railroad equipment.
NEW JERSEY,	Contract must be signed and proven by one subscribing witness and be recorded, except for railroad equipment.
NORTH CAROLINA,	Contract must be signed and proven by one subscribing witness and registered, except where contract is for railroad equipment when the acknowledgment must be by the vendee in person.
NORTH DAKOTA,	Contract should be signed by two subscribing witnesses, and must be filed to reserve title as against third parties. There is no provision for recording. Some recording officers accept same for filing with one witness and some with no witnesses at all, but even if filed without the necessary witnesses it is doubtful if such filing has any effect except in the appearance it gives of legality.
OKLAHOMA TERRITORY,	From the statute law it would seem to be necessary that a contract should be signed by two subscribing witnesses in order that it may be filed. Some recording officers accept such contracts for filing with one witness and some with no witness at all, and by a recent court decision they are evi-

(CLASS III—Continued.)

dently justified in so doing as it was held that no witnesses were necessary.

SOUTH CAROLINA, Where contract is for less than \$100.00 it may be filed if signed by one subscribing witness and it is not necessary that such witness should prove it by his oath. Where for \$100.00 or more such witness must prove the instrument by his oath before it can be recorded.

SOUTH DAKOTA, Contracts should be signed by two subscribing witnesses. Nearly every recording officer in the state accepts such contracts for filing without witnesses. It is doubtful if such filing has any legality. Copy must be delivered to vendee.

CLASS IV.

States where conditional contracts of sale must be recorded to hold title as against third parties and may be acknowledged by vendor so as to entitle them to be recorded.

IOWA. (Except for railroad equipment).

CLASS. V.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties and must be acknowledged by vendee in person in order to be so recorded or filed.

(CLASS V—Continued.)

COLORADO,
CONNECTICUT,

DISTRICT OF COLUMBIA, (Where over \$100.00).

MARYLAND,

NEW HAMPSHIRE, (Must be accompanied by affidavit
of vendee and vendor).

CLASS VI.

States where conditional contracts of sale are not valid
as against third parties even when acknowledged by the vendee
and recorded.

ILLINOIS,

Property to be secured against third
parties must be held under a chat-
tel mortgage acknowledged by
vendee and duly recorded.

PENNSYLVANIA,

Railroad equipment may be sold
under conditional contract of sale
and railroads may also chattel
mortgage their property. A chat-
tel mortgage is also valid when
executed upon certain articles
connected with the coal and iron
industries, but in all other cases
the only method of retaining a
lien or title on personal property
is by the execution of a lease or
bailment.

PART III.

DIGEST OF STATE LAWS.

ALABAMA,

Conditional contracts of sale must be in writing signed by vendee, and cannot be filed but must be recorded to hold title against third parties except in Jefferson and Montgomery Counties where no record is required. They do not need to be acknowledged by vendee or proven by a subscribing witness, except when railroad equipment is involved. Landlord's lien for rent is subsequent to such contract whether the contract is recorded or not.

ARIZONA,

Conditional contracts of sale must be in writing, signed by vendee. They do not need to be recorded but must be filed to hold title against third parties. It is not necessary same should be acknowledged by vendee or proven by subscribing witness.

ARKANSAS,

Conditional contracts of sale must be in writing signed by vendee. It is not necessary to either record or file to hold title as against third parties, except when railroad equipment is involved.

CALIFORNIA,

Conditional contracts of sale must be in writing signed by vendee. It is not necessary to either record or file to hold title against third parties.

COLORADO,

Conditional contracts of sale must be in writing signed by vendee. They must be recorded to hold title against third parties and require acknowledgment of vendee in person.

CONNECTICUT,

Conditional contracts of sale must be in writing signed by vendee. They must be recorded to hold title against third parties and require acknowledgment of vendee in person.

DELAWARE,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be either recorded or filed in order to hold title as against every one excepting a landlord, who has a prior lien for rent of premises where property is located.

DISTRICT OF
COLUMBIA,

Conditional contracts of sale must be in writing signed by vendee. If for \$100.00 or less they do not need to be either filed or recorded in order to hold title against all persons, excepting a landlord who has prior lien for rent of premises where property is located. Where contract is for more than \$100.00 it must be acknowledged by vendee in person and be recorded in order to hold title against third

parties. There is no provision for filing or for proof by a subscribing witness.

FLORIDA,

Conditional contracts of sale must be in writing signed by vendee. They cannot be filed. In order to record they must be acknowledged by vendee in person or be proven by one subscribing witness. They are good as against all persons excepting landlord for two years from date without recording, except where the property is railroad equipment when the contract must be acknowledged by the vendee in person and be recorded.

GEORGIA,

Conditional contracts of sale must be in writing signed by vendee. There is no provision for filing, but they must be acknowledged by vendee in person or proven by one subscribing witness and be recorded within forty days after vendee takes possession in order to hold title as against third parties. A landlord has a prior lien for rent of his premises where property is located if such property is moved thereon before contract is recorded.

IDAHO,

Conditional contracts of sale must be in writing signed by vendee. It is not necessary that they be either recorded or filed in order to hold title as against all persons.

ILLINOIS,

There is no statute recognizing conditional contracts of sale, and such instruments even though in writ-

ing, signed by both parties and acknowledged and recorded do not hold title against third parties. As to an assignee, they are held good without recording or filing. The only method of retaining a lien as to third parties is by chattel mortgage duly acknowledged by the mortgagor and recorded.

INDIANA,

Conditional contracts of sale must be in writing signed by the vendee, but do not need to be either recorded or filed in order to hold title against all persons, except when railroad equipment is involved. A landlord has no prior lien for rent of his premises in which property is located.

INDIAN TERRITORY,

Conditional contracts of sale must be in writing signed by vendee. The law is not definitely settled as to recording or filing. They may be filed where acknowledged by vendee in person or proven by one subscribing witness. It is not necessary to record. Most recording officers will file such contract without acknowledgment or proof by witness and some courts have held such filing is legal. They must be endorsed "This instrument to be filed but not recorded."

IOWA,

Conditional contracts of sale must be in writing signed by vendee and must be recorded to hold title as against third parties. They may be acknowledged by the *vendor* which entitles them to record,

except when railroad equipment is involved. This is the only state in which such a provision is found.

KANSAS,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be recorded but must be filed to hold title against third parties. No acknowledgment by vendee or proof by subscribing witness is required.

KENTUCKY,

Conditional contracts of sale must be in writing signed by vendee, and must be recorded in order to hold title as against third parties. They cannot be filed. Before same can be recorded they must be acknowledged by vendee in person, or be signed by two subscribing witnesses, either one of whom may prove same by his oath.

LOUISIANA,

Conditional contracts of sale should be in writing signed by vendee. There is no provision for recording or filing when the property in question is movable. Landlord's lien for rent of premises in which property is situated is prior to such contract.

MAINE,

Conditional contracts of sale must be in writing signed by vendee. They must be recorded to hold title against third parties and cannot be filed. No acknowledgment by vendee or proof by subscribing witness is required, except when railroad equipment is involved.

MARYLAND,

Conditional contracts of sale must be in writing signed by vendee. In order to hold title as against third parties contracts must be acknowledged by vendee in person and recorded. There is no provision for filing or proof by subscribing witness. Landlord's lien for rent is prior to such contract unless recorded before the property is left on his premises.

MASSACHUSETTS,

Conditional contracts of sale must be in writing signed by vendee, but do not need to be either recorded or filed in order to retain title as against all parties, except when railroad equipment is involved.

MICHIGAN,

Conditional contracts of sale must be in writing signed by vendee, but do not need to be recorded or filed in order to retain title as against all parties, except when railroad equipment is involved.

MINNESOTA,

Conditional contracts of sale should be in writing signed by vendee, and must be filed to hold title against third parties. There is no provision for recording. No acknowledgment by vendee or proof by subscribing witness is necessary.

MISSISSIPPI,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be either recorded or filed or acknowledged or proven in order to retain title

as against third parties for the term of three years, except where the vendee shall transact business otherwise than in his own name and fail to disclose his principal or partner by a sign easy to read placed conspicuously at his place of business, or in his own name, without similar disclosure of an existing partner. In such case the only sure method is to have the contract acknowledged by the vendee in person or proven by one subscribing witness and recorded. Landlord's lien for rent of premises where property is located is prior to such contract if moved thereon before contract is recorded.

MISSOURI,

Conditional contracts of sale must be in writing signed by vendee. In order to hold title against third parties same must be acknowledged by vendee or proven by one subscribing witness, and be recorded. Where the property covered is railroad equipment the contract must be acknowledged by the vendee in person and be recorded. There is provision for filing a chattel mortgage signed by one subscribing witness but it is doubtful if such provision extends to conditional contracts of sale.

MONTANA,

Conditional contracts of sale must be in writing signed by vendee and must be filed but do not need to be recorded in order to hold title as against third parties. The original should be sent for filing.

NEBRASKA,

Conditional contracts of sale must be in writing signed by vendee, and must be filed but do not need to be recorded to hold title against third parties. There is no necessity for acknowledgment by vendee or proof by subscribing witness, but copy of contract must have attached thereto an affidavit of the vendor or lessor, or his agent or attorney, containing the names of the parties, a description of the property and the true interest of the vendor or lessor therein.

NEVADA,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be acknowledged by vendee or be signed or proven by a subscribing witness, or be recorded or filed in order to hold title.

NEW HAMPSHIRE,

Conditional contracts of sale must be in writing, signed by all parties thereto, and must be recorded to hold title as against third parties. The contract when sent for record must be accompanied by an affidavit of vendor and vendee to the effect that the lien is a valid one and that the amount thereof is justly due and owing from purchaser to vendor. Contracts must be recorded within twenty days from date. There is no provision for acknowledgment by vendee or proof by subscribing witness, except where the property sold is railroad equipment when the con-

tract must be acknowledged by the vendee in person and be recorded.

NEW JERSEY,

Conditional contracts of sale must be in writing signed by vendee, and must be acknowledged by vendee or be proven by one subscribing witness in order to be recorded. They cannot be filed. Landlord's lien for rent of premises in which property is located is subsequent to the lien of such contract whether the contract be recorded or not. Where the property sold is railroad equipment the contract must be acknowledged by the vendee in person before it may be recorded.

NEW MEXICO,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be acknowledged by vendee, or be signed or proven by a subscribing witness or be recorded or filed in order to retain title as against all parties.

NEW YORK,

Conditional contracts of sale must be in writing signed by vendee. They do not need to be either acknowledged by vendee or proven by a subscribing witness, but they must be filed in order to hold title as against all third parties. There is no necessity for recording. On articles attached, or to be attached to a building, contract shall contain a description of such building by street and number, etc., if known, so that same may be readily identified. Contracts for rail-

- road equipment must be acknowledged by vendee and be recorded.
- NORTH CAROLINA, Conditional contracts of sale must be in writing signed by vendee. There is no provision for filing such contracts. They must be acknowledged by vendee or be proven by one subscribing witness in order to be registered, and such registering is necessary to hold title as against third parties. Where the contract is for railroad equipment the acknowledgment must be by the vendee in person.
- NORTH DAKOTA, Conditional contracts of sale must be in writing and be signed by vendee. They need not be recorded but must be filed to hold title as against third parties. In order to be filed, such a contract must be signed by two subscribing witnesses but it need not be acknowledged by the vendee or be proven by the subscribing witnesses in any manner. Some recording officers accept such contracts with but one subscribing witness and others with no witness at all. Such filing, it would seem, has no effect except in the appearance of legality given thereby.
- OHIO, Conditional contracts of sale must be in writing and be signed by vendee. They need not be acknowledged by vendee or be signed or proven by a subscribing witness in order to be recorded or filed. They must be recorded or filed in order to hold title as against third parties. If the con-

tract is filed it is not necessary that it be recorded. An affidavit of the vendor, his agent or attorney should be attached to the copy of the contract when filed, stating the interest of the vendor in the property and the amount unpaid.

OKLAHOMA TERRITORY,

Conditional contracts of sale must be in writing and be signed by the vendee. They need not be recorded. The law is not definitely settled as to the requirements of filing. If a contract is acknowledged by vendee or signed by two witnesses it is certainly entitled to be filed. The witnesses need not prove the instrument by oath. Many recording officers will file without acknowledgment by vendee and without witnesses, and such filing, it would seem from a recent decision of the courts, is valid.

OREGON,

Conditional contracts of sale must be in writing, signed by vendee. They do not need to be acknowledged by vendee or be proven by a subscribing witness or be recorded or filed to retain title as against all parties, except where railroad equipment is involved.

PENNSYLVANIA,

Except for railroad equipment, the laws of this state do not recognize conditional contracts of sale where the rights of third parties become involved, even though in writing, signed by vendee and acknowledged and recorded. Neith-

er are chattel mortgages, recognized except upon railroad equipment and for certain articles and machinery connected with the coal and iron industry. As to all other articles the only method of reserving a lien or title is to have the contract in the form of a bailment or lease. There should be a definite term of leasing with stated amounts to be paid as rent. Contract should provide property is to be delivered to lessor at the end of said period. There can be no express statement that title is retained in the lessor, and same is not necessary as he is in fact the owner. There can be no express provision for bill of sale, but the lease may provide that lessee shall become the absolute owner by his election upon prompt and full payment of the rent as specified.

RHODE ISLAND, Conditional contracts of sale must be in writing signed by vendee. They do not need to be acknowledged by the vendee or be signed or proven by a subscribing witness or be recorded or filed in order to hold title as against all parties.

SOUTH CAROLINA, Conditional contracts of sale must be in writing signed by vendee, and should always be signed by one subscribing witness. Where the amount is less than \$100.00 the contract may be filed without proof by subscribing witness, and must be filed to hold title as against third parties. Where for

\$100.00 or more same must be proven by one subscribing witness and recorded in order to hold title as against third parties. There is no provision for acknowledgment by vendee.

SOUTH DAKOTA, Conditional contracts of sale must be in writing signed by vendee, and in the contract must appear a statement that a copy has been delivered to him. Same does not need to be recorded but must be signed by two subscribing witnesses in order to be filed, and should be filed in order to retain title as against third parties. It is not necessary the witnesses should prove the instrument by their oaths. Many recording officers accept such contracts for filing without witnesses but this it would seem has no effect except in the appearance it gives of legality.

TENNESSEE, Conditional contracts of sale must be in writing signed by vendee. They do not need to be either acknowledged by vendee or be signed or proven by subscribing witness or to be recorded or filed in order to hold title as against all parties, except when railroad equipment is involved.

TEXAS, Conditional contracts of sale must be in writing signed by vendee. The original contract may be filed without either acknowledgment by vendee or signing or proof by

a subscribing witness and it must be filed to preserve vendor's title as against third parties, but does not need to be recorded, except when railroad equipment is involved. If a copy is to be filed, the original must be sent for comparison and be witnessed by two persons or be acknowledged by the vendee.

UTAH,

Conditional contracts of sale must be in writing, signed by vendee. As to all articles except railroad equipment they need not be acknowledged by vendee or be signed or proven by subscribing witness, or be filed or recorded in order to hold title as against third parties.

VERMONT,

Conditional contracts of sale must be in writing signed by vendee. The original must be recorded within thirty days from delivery of property in order to hold title as against third parties, but it is not necessary that the contract should be acknowledged by vendee or be signed or proven by a subscribing witness in order to be recorded. There is no provision for filing.

VIRGINIA,

Conditional contracts of sale must be in writing signed by vendee and vendor, and a copy must be delivered to the vendee. Same may be filed without being acknowledged by vendee or being signed or proven by a subscribing witness, except when railroad equip-

ment is involved. Such filing is necessary to hold title as against all third parties. There is no provision for recording. Landlord's lien for rent of premises is prior to such contract unless contract is filed before property is moved on his premises.

WASHINGTON,

Conditional contracts of sale must be in writing and be signed by vendee and vendor. Contracts do not need to be acknowledged by either party or be signed or proven by a subscribing witness in order to be filed. They do not need to be recorded. They must be filed within ten days after vendee takes possession in order to hold title as against third parties. Where the property sold is railroad equipment there must be an acknowledgment by the vendee and contract must be recorded.

WEST VIRGINIA,

Conditional contracts of sale should be in writing signed by vendee, and do not need to be acknowledged by vendee or to be signed or proven by a subscribing witness in order to be recorded in Miscellaneous Record Book. They must be so recorded to hold title as against third parties. There is no provision for filing. Where the property sold is railroad equipment the contract must be acknowledged by the vendee and be recorded.

WISCONSIN,

Conditional contracts of sale must be in writing and be signed by vendee and vendor. They do not need to be acknowledged by vendee or be signed or proven by a subscribing witness in order to be filed. It is not necessary to record but they must be filed to hold title as against third parties.

WYOMING,

Conditional contracts of sale must be in writing and be signed by vendee. They do not need to be acknowledged by vendee or be signed or proven by a subscribing witness in order to be filed. They do not need to be recorded, but must be filed to hold title as against third parties. A copy should be sent for filing to which is attached an affidavit of vendor, his agent or attorney, which states the names of the parties and gives a description of the property with the full and true interest of the vendor therein. Where the property covered is railroad equipment the contract must be signed by all parties, be acknowledged by the vendee and be recorded.

PART IV.

State Laws.

ALABAMA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute law in this state. Revised Code of 1896, §§ 1017, 1018; Summer v. Woods, 67 Ala. 139; Fairbanks v. Eureka Co., 67 Ala. 109.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without further formality in the way of acknowledgment or proof, or filing or recording; but in order to make it valid and to hold title as against third parties it is necessary that same should be recorded. The instrument need not be acknowledged by the vendee or vendor, nor be signed or proven by a subscribing witness in order to be so recorded. Revised Code of 1896, § 991.

Recording or Filing.

When the contract has been duly executed by the vendee, it is necessary in order to hold title as against third parties that the original should be recorded (there is no provision for filing) within thirty days after the date thereof with the Probate Judge of the county where the party securing possession of the property resides.

In case the property is delivered and remains in some other county than that in which the vendee resides, a copy of the contract must be recorded in like manner in that county also.

In case the property is removed to another county at any time, a copy of the contract must within three months after the date of such removal, be recorded in like manner in that county as well.

Where property is brought into the state subject to such contract, a copy thereof must be recorded in like manner within three months after the date of entry into the state. Revised Code of 1896, § 991; *Brandon Printing Co. v. Bostick*, 28 So. 705.

Jefferson and Montgomery Counties.

The Counties of Jefferson and Montgomery are excepted from the above provisions, and no recording is necessary therein under any circumstances. Laws of 1898-9, p. 1120.

Recording Fee.

The fee to the recording officer is fifteen cents per folio of one hundred words. Revised Code 1896, § 1375. In addition to this a tax of fifteen cents must be paid for each \$100.00 or fraction thereof of the contract amount. Laws of 1907, Act No. 345, § 1.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is provision for the discharge of the contract from record after payment and within two months after demand. An express penalty is imposed for failure to make such discharge if it is demanded. Revised Code of 1896, § 1068.

Landlord's Lien.

A landlord's lien for rent of the building in which property may be placed is subsequent to the lien of a conditional contract of sale thereon whether the contract is recorded or not, and the landlord must pay the balance remaining under the contract before he can subject the property to a distress for rent. *Bingham v. Vandergrift*, 93 Ala., 283, or 9 So., 280.

Criminal Liability of Vendee for Disposal of Property.

It is a crime, punishable the same as larceny, to dispose of or to buy with knowledge any property covered by a conditional contract of sale, whether said contract be recorded or not. Criminal Code, §§ 4757, 5049, 5050.

Money Judgment or Replevin.

The law is not definitely settled as to whether or not a vendor may bring action for a money judgment, and, if unable to collect by this method, can thereafter replevin the property, but the trend of decisions is to the effect that such a judgment may be recovered, and if no levy is made upon the property covered by the conditional contract, or sale thereof

had, the vendor may thereafter bring action for possession in case the money judgment is not paid. If, however, such property be levied upon under execution or attachment, and is sold, the vendor cannot thereafter maintain a replevin action for possession of the property. *Thomason v. Lewis*, 103 Ala. 426, or 15 So. 830; See *Tanner v. Hall*, 89, Ala. 628; *Davis v. Millings*, 37 So. 737; *Montgomery Iron Works v. Smith*, 98 Ala. 644.

Fixtures.

Where the property sold under conditional contract of sale has been fastened to a building in such a manner that same may be removed without material injury to the building, or to itself, the vendor is entitled to possession of the property if the contract price is not paid. Where the property has been so attached to a building as to become a material part thereof and so it cannot be removed without great injury to the building, or to itself, the lien attaches to the building for the amount unpaid under the contract. *Warren v. Liddell*, 110 Ala. 232; *Miller v. Griffin*, 102 Ala. 610; *Wood v. Holly Mfg. Co.*, 100 Ala. 326.

When Vendor or Vendee Loses.

If property in possession of a vendee under conditional contract of sale is destroyed before full payment is made, the title is held to be in vendor and he cannot therefore enforce payment of the balance. *Bishop v. Minderhout & One*, 128 Ala. 162; *Foley v. Felrath*, 98 Ala. 176; *Warren v. Liddell*, 110 Ala. 232.

General Remarks.

Railroad equipment may be sold under conditional contract of sale, which must be in writing and the original re-

corded within three months after the making thereof in the office of the Judge of Probate for the county where such railroad shall have its principal place of business, and if no office or principal place of business exist within the state, then in the office of the Secretary of State, and all cars, engines, etc., must have plainly marked thereon the name of the vendor. Revised Code of 1896, § 1016.

ARIZONA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute law in this state. Revised Statutes of 1901, §§ 2702, 3284.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof and without filing or recording, but in order to make it valid and to hold title as against third parties it must be filed and abstracted. If the original contract is sent to be filed and abstracted it is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness. Revised Statutes of 1901, § 3285.

Recording or Filing.

In order to hold title as against third parties it is necessary that the original contract, duly executed by the vendee, be filed and abstracted. There is no provision for recording and no express provision as to the time within which the contract must be filed.

The officer with whom the contract is filed is the county recorder, and the contract should be filed both in the county where the party receiving the property resides and the county in which the property itself is actually located. If these are both in one county, then only one filing is necessary.

Where a copy of the contract is sent for filing the law requires that the original should have been acknowledged by the vendee but this acknowledgment is not required if the original contract is sent instead of a copy. Revised Statutes of 1901, §§ 2702, 3284, 3285.

Filing Fee.

The fee to the county recorder for filing such a contract is seventy-five cents. Revised Statutes of 1901, § 2596.

Re-recording or Renewal.

A contract of sale is valid for the term of four years. There is no provision for re-recording or renewal.

Discharge.

The law provides that a contract so filed must be released by the vendor after payment in full. There seems, however, to be no express penalty for failure to release. The general rule of law then obtains that upon failure to discharge after payment, any party injured by such failure can collect his actual damages. It is therefore always advisable to discharge such a contract after payment upon request of the vendee or any other party in interest.

The fee to the officer with whom such a contract is on file for discharging same is seventy-five cents. Revised Statutes of 1901, §§ 2596, 3288.

Landlord's Lien.

There seems to be no express provision that a landlord shall have a lien for rent on property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property covered by a conditional contract of sale, whether recorded or filed or not, punishable where the property is valued at more than \$50.00 by imprisonment in the Territorial prison for not less than one nor more than ten years, and where the value of the property is \$50.00 or less by a fine not exceeding \$300 or by imprisonment in the county jail for not exceeding six months, or both. Penal Code, §§ 443-7, 461.

Money Judgment or Replevin.

The question as to whether or not a money judgment may be secured, and, if not collected, the property afterwards be replevined, does not seem to have been passed upon by the courts of this state.

Fixtures.

There seems to have been no determination as to the status of property held under conditional contract of sale when such property has been attached to a building.

ARKANSAS.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state, and many court decisions hold them valid even against a bona fide purchaser for value. Sandels & Hill's Digest, §§ 6260-62; Andrews v. Cox, 42 Ark. 473; Simpson v. Shackelford, 49 Ark. 63; Carroll v. Wiggins, 30 Ark. 402; McIntosh v. Hill, 47 Ark. 363; Cincinnati Safe Co. v. Kelly, 54 Ark. 476; McRea v. Merrifield, 48 Ark. 160.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

In all commercial transactions such a contract is valid as to all parties and does not need to be either acknowledged or proven.

Recording or Filing.

The contract is valid for the term of five years and does not need to be either recorded or filed to hold title as against all third persons. Even a bona fide purchaser for value gets no title where there is a balance unpaid under the contract.

Landlord's Lien.

There is no provision of law in this state giving a landlord a lien for rent on property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of or to receive property on which a lien under conditional contract exists, punishable on conviction by imprisonment in the penitentiary for not less than six months nor more than two years if the value of the property is over \$10.00, and by a fine of not less than \$10.00 nor more than \$50.00 where the value of the property is \$10.00 or less. Sandels & Hill's Digest, §§ 1868-71.

Money Judgment or Replevin.

Court decisions in this state hold that the vendor may take out an attachment under his contract and afterward sue the vendee for the debt, but if he sues for and secures a money judgment he cannot thereafter replevin the property. *Butler v. Dodson*, 94 S. W. 703; *Edgwood Distilling Co. v. Shannon*, 60 Ark. 133, or 39 S. W. 147.

Fixtures.

When property sold under conditional contract of sale has been fastened to a building in such a manner that it can be removed without material injury to the building or to itself, it may be taken possession of if the contract price is not paid. Where, however, it has been attached to the building in such a manner as to become a material part thereof and so it cannot be removed without injury to the building or to itself, a lien for the balance unpaid attaches to the building, and may be enforced by an action in equity. *Incorporated Town of Ozark v. Adams*, 83 S. W. 920; *Choate v. Kimball*, 56 Ark. 61, or 19 S. W. 108; *Bemis v. Bank*, 63 Ark.

625, or 40 S. W. 127; Markle v. Stackhouse, 65 Ark. 23, or 44 S. W. 808; Tenniswood v. Smith, 82 S. W. 834.

When Vendor or Vendee Loses.

Where property sold under conditional sale contract is destroyed while in the vendee's possession and before payment, he is not relieved from his obligation. Phillips v. Ollenberg Music Co., 99 S. W. 1105.

General Remarks.

Conditional contracts of sale for railroad equipment must be in writing, be signed by all parties, be acknowledged by the vendee and recorded with the Secretary of State. Every car, engine or other article so sold must have plainly marked on each side the name of the vendor, lessor or bailor, followed by the word "Vendor," "Lessor" or "Bailor" as the case may be. Sandels & Hill's Digest, §§ 6260-62.

CALIFORNIA.

Legal Status of Conditional Contracts of Sale.

There is no express statutory provision in this state for conditional contracts of sale, but their legality is recognized by the courts in many decisions. *Lundy Furniture Co. v. White*, 128 Cal. 170; *Perkins v. Mettler*, 126 Cal. 100; *Kellogg v. Burr*, 126 Cal. 38; *Van Allen v. Francis*, 123 Cal. 474; *Vermont Marble Co. v. Brow*, 109 Cal. 236.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract does not need to be either acknowledged or proven to make it valid, not only as between the parties thereto but as to all third persons, even though these may be bona fide purchasers for value.

Recording or Filing.

The contract is valid for two years if executed without the state, and for four years if executed within the state, and holds title as against all persons without being either recorded or filed.

Landlord's Lien.

There is no provision of law in this state giving a landlord a lien for rent on property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime punishable as larceny to dispose of property covered by chattel mortgage. There is no specific law making it a crime to dispose of property held under conditional contract of sale. Penal Code, §§ 507, 538. (See pp. 13, 14.)

Money Judgment or Replevin.

It is definitely settled in this state that where an action is brought for a money judgment on a conditional contract of sale, no action for possession of the property can afterwards be maintained, even though the judgment is not collected. *Parke & Lacy Co. v. White River Lumber Co.*, 101 Cal. 37, or 35 Pac. 442.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such manner that it may be removed without material injury to the building or to itself, the vendor is entitled to its possession if the contract payments are not made, notwithstanding the fact that such property has become a fixture. In case the property has been so incorporated in the building as to become a part thereof and so it cannot be removed without material damage to the building or to itself, the vendor would undoubtedly have a lien upon the building to be enforced by suit in equity. *Tibbetts v. Moore*, 23 Cal. 208.

CALIFORNIA.

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COLORADO.

Legal Status of Conditional Contracts of Sale.

There are no statutory provisions in this state governing conditional contracts of sale, but they are held to be valid by court decisions. *Singer Mfg. Co. v. Converse*, 23 Colo. 247.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid between the parties thereto without acknowledgment or proof of any kind and without being recorded.

Recording or Filing.

Early decisions by the courts held that where the contract was not recorded the vendor lost his rights entirely if the property was transferred to an innocent purchaser for value or levied upon or attached by creditors.

In a later case, *Singer Mfg. Co. v. Converse*, 23 Colo., 247, the court varies the former doctrine almost to the ex-

tent of holding that even where the contract is not recorded a vendor can follow his property into the hands of third persons or creditors. The case does not decide this point specifically, as it was not at issue, but plainly indicates that where there is no fraud in the transaction the vendor's lien would be held prior to the rights of a subsequent purchaser or of any creditor of the vendee.

A chattel mortgage if properly acknowledged can be recorded with the county clerk and recorder of the county where the property is situated, and conditional contracts of sale may be likewise recorded.

There is no provision of law expressly requiring that a conditional contract of sale must be acknowledged by the vendee in order to be recorded. For this reason many conditional contracts of sale secured in the state of Colorado have been acknowledged by the vendor alone in exactly the same manner as provided for by statute in the State of Iowa and have afterwards been sent for record. They have been accepted by the recording officers but up to this date no case has arisen in which the validity of such recording has been tested.

Recording Fee.

The fee for recording is one dollar and upwards according to the number of words. Mills' Annotated Statutes, Supplement 1891-1896, Ch. 50, § 1900. The counties of the state are divided into classes with varying recording fees for each class. The arrangement is too complicated for inclusion. One dollar will usually be found sufficient to cover the recording fee in any part of the state.

Re-recording or Renewal.

A chattel mortgage must be renewed at the expiration of the term prescribed for payment. There is no such provision for conditional contracts of sale.

Discharge.

There is no provision for discharge of the contract from record after payment and no express penalty is imposed for failure to make such discharge. It is, however, always best upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received.

Criminal Liability of Vendee for Disposal of Property.

It is a crime punishable as larceny to dispose of chattel mortgaged property. There is no specific provision covering property held under conditional contract of sale. Mills' Annotated Statutes, 1891, Ch. 25, § 393. (See pp. 13, 14.)

Money Judgment or Replevin.

There has been no decision in this state determining the question as to whether or not the vendor under conditional contract of sale may sue for a money judgment, and, if unable to collect, may afterwards replevin the property.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building no matter in how slight a manner, it becomes a part of the real estate and cannot afterwards be recovered. If the vendor has any rights he must enforce them against the real estate itself by an action in equity. *Fisk v. Bank*, 14 Colo. App. 27.

Forms.**ACKNOWLEDGMENT BY AN INDIVIDUAL.**

STATE OF COLORADO, }
COUNTY OF GILPIN. } ss.:

Henry Wilson appeared before me this first day of June, 1907, in person and acknowledged the foregoing instrument to be his act and deed, for the uses specified therein.

Witness my hand and official seal.

HARVEY B. WELCH,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF COLORADO, }
COUNTY OF BOULDER. } ss.:

Be it remembered that on this first day of June, A. D. 1907, before me, a Notary Public, residing in the City of Boulder, County of Boulder, in the State of Colorado, duly commissioned to take acknowledgments of proofs of deeds and other instruments in writing under seal, personally came James B. Martin, President of the Boulder Mercantile Company, who is known to me to be the person whose name is signed to the foregoing instrument, who, being by me duly sworn, deposes and says that he resides in the County of Boulder and State of Colorado; that he is President of the Boulder Mercantile Company; that the seal affixed to the foregoing instrument is the corporate seal of the Company; that it was affixed by order of said Company; and that he signed the corporate name of said Company to said instrument by like order, as President of said Company; and acknowledged that he executed and delivered the said instru-

ment on behalf of said Company as his free and voluntary act, and that the Company also executed said instrument as its free and voluntary act, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal this first day of June, A. D. 1907.

JOHN HENRY FREEMAN,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. The judge, clerk or deputy clerk of any court of record; the recorder, clerk or deputy clerk of any county; or, within their counties, any notary public or justice of the peace.

Without the State but Within the United States. The secretary of any state or territory; the clerk of any court of record having a seal, whether a state, territorial or United States court; a notary public, or a commissioner of deeds appointed under the laws of the State of Colorado. Any other officer authorized thereto by the laws of the state or territory within which such acknowledgment is taken may also act, provided the official title, the authority and the signature of the officer acting are certified under the seal of the court by a clerk of some court of record of the county, city or district.

CONNECTICUT.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this State. Revised Statutes of 1902, §§ 4864-5.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Revised Statutes of 1902, §§ 4864-5.

Acknowledgment or Proof.

Where a conditional contract of sale covers household furniture, musical instruments, bicycles or property exempt from attachment or execution, it is valid as between the parties thereto and also as to third parties without acknowledgment or proof, or filing or recording, but if it covers or includes other property it will not be valid and hold title as against third parties, unless it be recorded, and in order that the instrument may be so recorded it must be acknowledged by the vendee in person. There is no provision for acknowledgment by the vendor or proof by a subscribing witness. Revised Statutes of 1902, §§ 4864, 4865.

Recording or Filing.

Where the contract has been duly executed and acknowledged by the vendee in person, it may be recorded and is then valid as against all third parties. There is no provision for filing. The recording officer is the town or township clerk of the town or township in which the vendee resides.

The original contract must be sent for record within a reasonable time after its date. Title will certainly be reserved if the contract is recorded before vendee gets possession of the property. Revised Statutes of 1902, § 4864; *Boston Furniture Co. v. Thomas*, 61 Atl. 949.

Recording Fee.

The fee to the recording officer seems to be fixed at forty cents per page but a larger charge is often attempted, usually about ten cents per folio of one hundred words. Revised Statutes of 1902, § 4845.

Re-recording or Renewal.

A contract in writing which is non-negotiable is valid for seventeen years; other contracts for six years. There is no provision for re-recording or renewal. Conditional contracts of sale are classed among the non-negotiable instruments.

Discharge.

There is no provision for discharge of such a contract from record after payment and no express penalty for failure to make such discharge. It is always well, however, that such a contract should be discharged after payment upon request being made therefor by the proper party, as any person damaged by such failure could undoubtedly recover his actual loss.

Landlord's Lien.

A landlord's lien for rent is not recognized by the laws of this state.

Criminal Liability of Vendee for Disposal of Property.

The vendee under conditional contract of sale who sells or conveys such property or any part thereof without consent of the vendor and without informing the person to whom he sells of the true condition, shall, upon conviction, be imprisoned not more than six months, or fined not more than \$100.00. A person who removes or conceals such property, or who aids in or assents to such action, shall be fined not more than \$500.00, or imprisoned for not more than six months. Revised Statutes of 1902, § 1253.

Money Judgment or Replevin.

If a money judgment is taken covering the amount unpaid under a conditional contract of sale the property cannot afterwards be replevined even though the judgment is not collected. *Crompton v. Beach*, 62 Conn. 25; *Hine v. Roberts*, 48 Conn. 267.

Fixtures.

Where property sold under conditional contract of sale has been attached to a building in such a manner as to make it a fixture, it cannot be removed in case of non-payment. *Woodruff & Beach Iron Works v. Adams*, 37 Conn. 233.

Forms.**ACKNOWLEDGMENT BY VENDEE IN PERSON.**

STATE OF CONNECTICUT, }
 COUNTY OF LITCHFIELD. } ss.:

On January 31, 1907, personally appeared John C. Anderson, signer and sealer of the foregoing instrument and acknowledged before me, same to be his free act and deed.

WILLIAM P. KEENAN,
 Notary Public, etc.

{ NOTARIAL }
 { SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. Any judge of a court of record whether of the state or of the United States; a clerk of the superior court, court of common pleas or district court; a justice of the peace; a commissioner of the superior court; a commissioner of the school fund; a notary public, or any town clerk or assistant town clerk.

Without the State but Within the United States. A commissioner appointed under the laws of the State of Connecticut, or any other officer authorized to take acknowledgments of deeds in the state or territory where the acknowledgment is taken.

DELAWARE.

Legal Status of Conditional Contracts of Sale.

There are no statutory provisions in this state governing conditional contracts of sale, but their legality is established by court decisions. Watertown Steam Engine Co. v. Davis, 5 Houston 218.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or by shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid not only between the parties thereto but as to all persons, excepting a landlord's lien for rent, without being either acknowledged or proven.

Recording or Filing.

There is no provision by which such contracts can be either recorded or filed, even if acknowledged or proven in the same manner as a deed of real estate, but from decisions

rendered by the courts it would seem they are valid without filing or recording as to all persons, excepting a landlord's lien for rent. *Knowles v. Pierce*, 5 Houston 178.

Landlord's Lien.

The owner of a building into which property covered by a conditional contract of sale is placed has a lien upon it for the rent of his premises which cannot be avoided. Revised Laws of Delaware, § 42, p. 868; *Knowles v. Pierce*, 5 Houston 178.

Criminal Liability of Vendee for Disposal of Property.

There is no provision of law making it a crime to dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

It is definitely settled in this state that a vendor under conditional contract of sale cannot bring suit for a money judgment covering the amount unpaid, and thereafter replevin the property if he fails to collect such judgment. If he elects to avail himself of the right to sue for the purchase price he cannot afterwards replevin the property. *Watertown Steam Engine Co. v. Davis*, 5 Houston 218.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession of the property if the contract pay-

ments are not made. Where the property has been so attached to a building as to become a material part thereof, and where same cannot be removed without great injury to the building or to itself, the property cannot be replevined, but it is probable that a lien for the balance unpaid can be forced against the building by an action in equity. *Ott v. Specht et al*, 8 Houston 61, or 12 Atl. 721; *Watertown Steam Engine Co. v. Davis*, 5 Houston 218.

DISTRICT OF COLUMBIA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by the statute law of the United States governing the District of Columbia. Code of the District of Columbia, §§ 546, 547.

How Executed.

They must be in writing signed by vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Code of the District of Columbia, § 547.

Acknowledgment or Proof.

Such a contract without regard to its amount is valid as between the parties thereto without acknowledgment or proof, or filing or recording.

Where the contract is for more than \$100.00, in order to hold title as against third parties, it is necessary that it be acknowledged in person by the vendee and be duly recorded. There is no provision for acknowledgment by the vendor, or proof by a subscribing witness.

If the contract is for \$100.00 or less it does not need to be either recorded or filed but is valid as against all parties except perhaps a landlord for rent. Code of the District of Columbia, §§ 546, 547.

Recording or Filing.

Where the contract is for more than \$100.00 and has been duly executed and acknowledged by the vendee, it is necessary in order to hold title as against third parties that the original contract should be recorded. There is no provision for filing.

The law does not state any definite time in which the recording must be done, but in order to be valid as against a landlord and attachment, or execution creditors, it should be before the vendee takes possession.

The recording officer is the Recorder of Deeds for the District of Columbia.

Where the contract is for \$100.00 or less no recording or filing is necessary to hold title as against all third parties with the possible exception of a landlord. Code of the District of Columbia, §§ 546, 547.

Recording Fee.

The fee to the recording officer is fifty cents for the first two hundred words and fifteen cents for each additional one hundred words. Code of the District of Columbia, § 552.

Re-recording or Renewal.

There is no provision for re-recording or renewal, and the contract is valid for the term of three years.

Discharge.

There is no provision for discharge of the contract from record after payment, and no express penalty for failure to make such discharge. It is, however, always best upon the request of the vendee or any other proper party to discharge such contract from record after payment in full.

Landlord's Lien.

Where the contract is for more than \$100.00 and has been recorded before the property is moved upon the landlord's premises, he has no lien for rent. Where the amount of the contract is for \$100.00 or less, and it is not recorded, the question is not definitely settled as to whether or not the landlord has a lien for rent upon such property found in his building, though cases decided in the City Courts of Washington have held that he is entitled to no such lien. Code of the District of Columbia, §§ 1229-30; *Saunders v. Wilson*, 8 Mackey 555; *Johnson v. Douglas*, 2 Mackey 36.

Criminal Liability of Vendee for Disposal of Property.

It is a crime, punishable by a fine of not more than \$100.00, or imprisonment for not more than ninety days, to sell, conceal or dispose of property held under conditional contract of sale, or to aid in so doing. Act of Congress 1904; Code of the District of Columbia, § 833a.

Money Judgment or Replevin.

Where the vendor under conditional contract of sale takes action to secure payment of his debt but is unsuccessful, he is deemed to have made an election of remedies, and cannot thereafter replevin the property. *Smith v. Gilmore*, 23 Wash. Law Rep. 717, or 7 App. Cases D. C. 192.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract of sale has not yet been determined. The probability is, however, that where such a contract is duly recorded before the property became a fixture, either the property could be removed or an action in equity be brought to enforce the balance unpaid as a lien upon the building.

Forms.**ACKNOWLEDGMENT BY VENDEE.**

DISTRICT OF COLUMBIA, ss.:

I, Robert D. Andrus, a Notary Public in and for the said District of Columbia, do hereby certify that Vinzenz Katz, the vendee named in contract hereto attached bearing date February 13, 1907, personally appeared before me in said District, the said party being personally well known to me as the person who executed the said agreement, and acknowledged the same to be his act and deed.

Given under my hand and official seal this 7th day of March, 1907.

ROBERT D. ANDRUS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the District. Any judge of a court of record and of law; any judge of the supreme, circuit, district or territorial courts of the United States; any justice of the peace, notary public, commissioner of a circuit court of the District, or commissioner of deeds of the District appointed for the purpose.

Without the District but Within the United States. Any chancellor of state or any officer who might take the acknowledgment within the District, but the official character of the officer acting must be duly certified, under the official seal, by a register, clerk or other public officer having cognizance of the facts.

78 **CONDITIONAL SALES (DISTRICT OF COLUMBIA).**

FLORIDA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statutory provision in this state, and their legality is established by court decisions. *Campbell Mfg. Co. v. Walker*, 22 Fla. 412; *Jackson Sharpe Co. v. Holland*, 14 Fla. 384; Revised Statutes of 1892, § 1981.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid without acknowledgment by the vendee or vendor, or proof by a subscribing witness, or recording or filing, not only as between the parties thereto but, for the term of two years, as to all third persons excepting a landlord's lien for rent. *Campbell Mfg. Co. v. Walker*, 22 Fla. 412.

Recording or Filing.

Such a contract does not need to be either recorded or filed for the period of two years, but if same is not paid at

the expiration of that time it should be recorded in order to hold title as to third parties. There is no provision for filing.

The recording officer is the clerk of the circuit court in the county where the vendee resides.

In order that such a contract may be recorded it is necessary that same should either be acknowledged by the vendee or proven by a subscribing witness. Such a contract should always be signed by a subscribing witness when it is taken, and such witness may be the salesman who procures the order, provided he does not also execute the contract on behalf of the vendor. When it becomes necessary to record the contract in question it may be sent to the subscribing witness who makes oath that he saw same duly signed and executed by the vendee. This does away with the necessity of requesting the vendee to acknowledge the contract in person. McClellan's Digest, p. 212, § 4; Revised Statutes of 1892, §§ 1391, 1973, 1986.

Recording Fee.

The fee to the recording officer is twenty cents for the first one hundred words and ten cents for each additional one hundred words or part thereof. Revised Statutes of 1892, §§ 1391, 1394.

Re-recording or Renewal.

The contract is valid for the term of five years. There is no provision for re-recording or renewal.

Discharge.

Provision is made for discharge of such a contract after payment. It may, however, be stated as a general rule that no discharge need be sent until same is requested by the vendee or some party in interest.

The fee for recording such a discharge is the same as for recording the contract, according to length. Revised Statutes of 1892, §§ 1391, 1986.

Landlord's Lien.

A landlord's lien for rent of the building in which such property may be placed would seem to be prior to the contract of conditional sale unless the contract in question be recorded before the property is moved upon his premises. Revised Statutes of 1892, §§ 1761-70.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property covered by chattel mortgage, punishable by imprisonment not to exceed one year, or fine not to exceed \$1,000.00, and this provision undoubtedly applies to property covered by conditional contract of sale. Revised Statutes of 1892, § 2476.

Money Judgment or Replevin.

If an action be brought under a conditional contract of sale for a money judgment and same cannot be collected, the vendor loses his lien upon the property and it cannot afterwards be replevined.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract of sale is not determined. The probability is, however, that where such a contract exists and the property is capable of removal, it can be taken possession of if the contract payments are not made, and especially so if the contract is recorded before the property becomes a fixture.

When Vendor or Vendee Loses.

The question of who shall bear the loss, where property is held by vendee under conditional contract of sale, and is destroyed before payment, has not been up squarely for decision. There are cases, where the contract is executory and title has not passed to the vendee, holding that vendor must stand the loss. *Schreyer v. Kimball Lumber Co.*, 54 Fed. 653; *Seeligson et al v. Philbrick*, 30 Fed. 600.

General Remarks.

A conditional contract of sale for railroad equipment, in order to be valid as to third parties, must be in writing signed by all parties and be acknowledged by the vendee, lessee or bailee in person and be recorded in the office of the Secretary of State. Each locomotive or car so sold, leased or hired shall have plainly marked on each side thereof the name of the vendor, lessor or bailor as the case may be, followed by the word "Vendor," "Lessor" or "Bailor" as the case may be. When paid the record must be discharged by an instrument in writing duly acknowledged and recorded, or by a declaration made by the vendor, lessor or bailor on the record itself and duly acknowledged. General Statutes of 1906, §§ 2845-6.

Forms.**PROOF BY WITNESS.**

STATE OF FLORIDA, }
COUNTY OF HERNANDO. } ss.:

In person before me comes Charles W. Ainsley, to me personally known, and being by me duly sworn, says he was present and saw Leslie W. Maynor sign and execute the at-

tached contract for the purposes therein recited and that the same was signed by him as a witness thereto.

CHARLES W. AINSLEY.

Subscribed and sworn to before me
this 7th day of May, 1907.

EARL MASSEY,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

ACKNOWLEDGMENT BY VENDEE.

STATE OF FLORIDA, }
COUNTY OF DUVAL. } ss.:

On this day personally appeared before me, Charles H. Brown, a Notary Public in and for said State and County, Thomas G. McFarrell, to me well known as the person described in and who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed and prays that it may be admitted to record.

In Witness Whereof, I have hereunto affixed my hand and official seal at Jacksonville, Florida, this third day of June, 1907.

CHARLES H. BROWN,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. Any judge, clerk or deputy clerk of a court of record; a notary public or a justice of the peace, the certificate of acknowledgment in all cases being under seal.

Without the State but Within the United States. A judge or clerk of any United States, state, territorial or district court having a seal; any notary public or justice of the peace having a seal; the certificate of acknowledgment in all cases being under the seal of the court or officer as the case may be.

GEORGIA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Code of Georgia, § 2776.

How Executed.

They should be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be recorded. It is necessary in order that such a contract may be recorded for the vendee to acknowledge it in person, or otherwise that it be proven by one subscribing witness. Code of Georgia, § 2776.

Recording or Filing.

After the contract has been duly executed by the vendee, it is necessary in order to hold title as against third parties that the original contract be recorded. There is no provision for filing. The statute law provides that the contract must

be recorded within thirty days from the date thereof, but the highest court in the state has decided that a record made within thirty days after the vendee secures possession of the property is sufficient.

The recording officer is the clerk of the superior court of the county where the vendee resides, but if the property is located in a different county the contract should also be recorded with the same officer in that county. An authenticated copy of the contract should be used where the original has already been recorded. Where property is without the state when the contract is made, such contract must be recorded as above set forth within six months after the property is brought into the state.

A subscribing witness can swear to the execution of such a contract so as to entitle same to be recorded, and the salesman who secures the order for the vendor may act as such subscribing witness provided he does not also execute the contract for and on behalf of the vendor. When it becomes necessary to record the contract in question it may be sent to the subscribing witness who makes oath that he saw same duly signed and executed by the vendee. This does away with the necessity of requesting the vendee to acknowledge the contract in person. Code of Georgia, §§ 2726-31, 2776, 2777; *Nichols v. Hampton*, 46 Ga. 253; *Hill v. Ludden*, 113 Ga. 320; *Cottrell v. Bank*, 89 Ga. 508; *Wheeler & Wilson Co. v. Bank*, 105 Ga. 57; *Berlin Machine Works v. Hilton & Dodge Lumber Co.*, 126 Fed. 627.

Recording Fee.

The fee for recording such a contract is twenty-five cents for the first one hundred words and ten cents additional for each one hundred words or part thereof. Some clerks make an additional charge of twenty-five cents for indexing, but there appears to be no provision of law authorizing same. Code of Georgia, § 5397.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is a law providing that such a contract must be discharged from record after payment, but no penalty is provided for failure to discharge. It is always best, however, upon request of the vendee or any other proper party, to discharge such a contract from record after payment in full. Fee for discharge, fifteen cents. Code of Georgia, §§ 2737-38.

Landlord's Lien.

A landlord's lien for rent of the building in which such property may be placed is prior to the lien of such contract unless the contract is recorded before the property is moved upon his premises. Code of Georgia, § 2795; Gartrell v. Clay, 81 Ga. 327; Cohen v. Chandler, 79 Ga. 427.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property covered by conditional contract of sale, punishable by labor in the chain gang for a period not exceeding twelve months or a fine not exceeding \$1,000.00, or both. Code of Georgia, Vol. III, §§ 673, 1039.

Money Judgment or Replevin.

The law in this state is definitely settled that a money judgment may be secured on the contract and every endeavor made to collect, after which if no payment is received the property may be replevined.

Where action in replevin is brought for possession, the vendor must repay to the vendee the full amount received

under the contract less a reasonable rent for use of the property.

A proceeding may be brought for possession of the property called "purchase money attachment." Code of Georgia, § 4539; *Bowen v. Frick*, 75 Ga. 786; *Snook v. Raglan*, 89 Ga. 251; *Hays v. Jordan*, 85 Ga. 741.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract of sale is not determined. The probability is that where such a contract is duly recorded before the property becomes a fixture, such property can either be removed or an action in equity be brought to enforce the balance unpaid as a lien upon the building.

When Vendor or Vendee Loses.

An engine and boiler were delivered under conditional contract of sale by which all title was reserved in vendor until paid for. The property was destroyed before payment in full, and in a suit brought to recover the balance unpaid it was held that the vendor was the owner and could not recover. *Randle v. Stone*, 77 Ga. 501.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF GEORGIA, }
COUNTY OF LOWNDES. } ss.:

In person before me comes Irvin A. Meeker, who being duly sworn, deposes and says that he was present and saw James Eaton sign and execute the attached contract for the

purposes therein recited, and that the same was signed by him as a witness thereto.

IRVIN A. MEEKER.

Sworn and subscribed before me

this 3rd day of May, 1907.

VICTOR DONNELL,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

No form of acknowledgment is prescribed by the Georgia Code. The Arkansas form is, however, held sufficient and may be used when a conditional contract of sale is to be acknowledged by vendee. This form is as follows:

ACKNOWLEDGMENT BY VENDEE.

STATE OF GEORGIA, }
COUNTY OF SUMTER. } ss.:

Before me, James Haskins, a Notary Public in and for the said State and County, personally came Herman Goldmann, to me known to be the person described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

In Witness Whereof, I have hereunto set my hand and seal this 4th day of June, 1907.

JAMES HASKINS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. Any judge of a court of record; a clerk of the superior court; a justice of the peace or a notary public.

Without the State but Within the United States. A commissioner of deeds for Georgia; the judge of any court of record in the state where the instrument was executed, the signature of the judge to be attested by the clerk of the court under seal; the clerk of any such court under seal of the court; a notary public of the state and county in which the instrument is executed, the authority of the notary to be certified under seal by the clerk of the court by which such notary was appointed, or, if appointed by the Governor, his authority to be certified by the secretary of state.

IDAHO.

Legal Status of Conditional Contracts of Sale.

There are no statutory provisions in this state governing conditional contracts of sale, but their legality is established by court decisions. *Harkness v. Russell*, 118 U. S. 663.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid without acknowledgment by the vendee or vendor, and without being signed or proven, or recorded or filed, not only as between the parties thereto, but as to all third persons, provided there is no fraud in the transaction.

Recording or Filing.

There is no provision under which such a contract can either be recorded or filed even when executed and acknowledged in the same manner as a deed of real estate. The contract is good for five years without recording or filing.

Landlord's Lien.

There is no law giving to a landlord any lien for rent on property sold under conditional contract of sale and placed upon his premises.

Criminal Liability of Vendee for Disposal of Property.

There is no specific statute in Idaho making it a crime to dispose of property held under conditional contract of sale, but he who sells or removes from the county where a chattel mortgage is filed, or in any manner destroys chattel mortgaged property without consent of the mortgagee, is guilty of larceny. Penal Code, § 4970.

Money Judgment or Replevin.

The right of a vendor to bring action for a money judgment and if same cannot be collected, to afterwards replevin the property, has not been settled by judicial decision in this state.

Fixtures.

There seems to have been no determination as to the status of property held under conditional contract of sale when such property has been attached to a building.

General Remarks.

The leading case involving the law of conditional contracts is that of *Harkness v. Russell*, 118 U. S. 663 (1886), which arose in Idaho, was appealed to the United States Supreme Court and is largely relied upon as determining the law of conditional sales where rules to the contrary are not established by state statutes.

In this case a conditional contract for the sale of an engine and sawmill was entered into, the vendor in Ohio and the vendee in Idaho. The contract was in writing but was neither recorded nor filed. The property was afterwards sold by the vendee before the contract payments had been completed, to a third party who knew that the purchase price had not been paid. Action was brought by the vendor in the state courts and was appealed to the United States Supreme Court. In the opinion there written, exhaustive information on the status of conditional sales is given and authorities are cited from nearly every state in the Union, showing that there is a plain distinction between a sale with a lien back on the property, which is in fact a chattel mortgage, and a conditional sale where no title passes until the full amount is paid.

The question as to whether a third party who gives full value for property conditionally sold without knowledge of the circumstances, could or could not hold it, was not passed upon in terms as the point was not at issue; but the court goes so far as to clearly indicate that it would hold in such a case that the purchaser for value does not take title, even though the contract is not filed or recorded, provided there is no fraud or collusion on the part of the original vendor, and no state law requiring recording or filing.

The decision in this particular case held that no title passed from the vendee to the third party, and that the original vendor was entitled to possession of the property or payment of balance due. The decision further holds that where a state has an express statute requiring such contracts to be filed or recorded, the vendor must comply or otherwise he cannot follow his property into the hands of a third party, or recover the unpaid balance from such party.

ILLINOIS.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are not provided for by the statute law of this state and are of no effect when the rights of third parties intervene but are held by the courts to be valid as between the original parties. The courts also hold that an assignee under state law gets no better title than the vendee possessed and cannot therefore hold the property as against the vendor.

It is not definitely settled as to what rights a trustee in bankruptcy obtains under such a contract. The trend of several decisions seems to indicate that such a contract will not be held valid as against a trustee in bankruptcy, and that the vendor must under such circumstances take his place as an ordinary creditor. *McCormick v. Hadden*, 37 Ill. 370; *Murch v. Wright*, 46 Ill. 487; *Chickering v. Bastress*, 130 Ill. 206; *Union Trust Co. v. Trumbull*, 137 Ill. 146; *Peoria Mfg. Co. v. Lyons*, 153 Ill. 427; *Hooven et al v. Burdette*, 153 Ill. 672; *Schwartz v. Messinger*, 167 Ill. 474; *In re Rogers*, 125 Fed. 177; *In re Galt*, 9 Am. Bank Rep. 683.

How Executed.

Where a conditional contract of sale is duly made in writing, it is valid as between the parties thereto and as to an assignee.

Acknowledgment or Proof.

There is no provision of law by which such a contract can be either acknowledged by the vendee or vendor, or proven

by a subscribing witness so as to entitle it to be filed or recorded, and there is no protection to the vendor in such filing or recording as to third parties. *Gilbert v. National Cash Register Co.*, 176 Ill. 288.

Recording or Filing.

It has been decided by the highest court in this state that even though a conditional contract of sale be acknowledged or proven in the same manner as provided for a deed of real estate and thereafter recorded, the vendor gets no better rights under such circumstances than where no acknowledgment or proof or recording has been made.

Under these conditions the proper manner of obtaining a lien on personal property as to third parties is by passing title to the vendee and taking in return a chattel mortgage properly executed and acknowledged by the vendee in person, and then having this chattel mortgage recorded. All notes secured by chattel mortgage must state upon the face thereof that they are so secured, otherwise the mortgage is of no force and effect. *Gilbert v. National Cash Register Co.*, 176 Ill. 288.

Landlord's Lien.

A landlord has a lien for rent on property located on the premises which is prior to even a chattel mortgage, unless same is recorded before the mortgaged property is moved upon his premises. *Hurd's Revised Statutes*, Ch. 80, § 16, p. 1136; *Kellogg Newspaper Co. v. Peterson*, 162 Ill. 158.

Criminal Liability of Vendee for Disposal of Property.

There is no law making it a crime to sell or dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

There is no settled law in this state providing that a vendor may bring action for a money judgment, and thereafter replevin the property if unable to collect on the judgment.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the vendor is entitled to possession of the property if no rights of third parties have intervened. *Andrews v. Chandler*, 27 Ill. App. 103; *Kaestner v. Day*, 65 Ill. App. 623; *Schumacher v. Allis Co.*, 70 Ill. App. 556; *Sword v. Low*, 122 Ill. 487; *Long v. Cockern*, 128 Ill. 29.

INDIANA.

Legal Status of Conditional Contracts of Sale.

There exists in this state no statutory provision concerning conditional contracts of sale, but they are recognized by the courts. *Keck v. National Cash Register Co.*, 12 Ind. App. 119; *Fredericks v. Sault*, 19 Ind. App. 604.

How Executed.

A conditional contract of sale must be in writing signed by the vendee but does not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision for acknowledgment or proof of a conditional contract of sale by the vendee or the vendor, nor by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing such a contract, and it is good as to all parties without recording or filing for the term of ten years, except perhaps where the property becomes an irremovable fixture.

Landlord's Lien.

The owner of a building into which property held under conditional contract of sale is moved does not have a prior lien upon such property for rent of the premises.

Criminal Liability of Vendee for Disposal of Property.

There is no provision of law making it a crime to dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

The courts have laid down the rule that where the vendor elects to secure a money judgment under the contract he cannot afterwards take possession of the property, no matter whether his judgment is paid or otherwise. *Smith et al v. Barber*, 153 Ind. 322.

Fixtures.

It has been held in this state, as in many others, that where the property sold under conditional contract of sale is attached to a building in such a manner that it can be removed without material injury to the building or to itself, the vendor is entitled to possession where the contract is not complied with. Where the article has become so attached to a building as to become a material part thereof, and cannot be removed without great injury to the building or to itself, it seems evident a lien for the balance unpaid would attach to the building, though this proposition is not definitely settled. *Binkley v. Forkner*, 117 Ind. 176; *Smith et al v. Barber*, 153 Ind. 322.

When Vendor or Vendee Loses.

The vendor under conditional contract of sale is entitled to recover the balance unpaid on property destroyed while in the vendee's possession, even though destroyed through no fault of the vendee. *Jessup v. Fairbanks, Morse & Co.*, 78 N. E. 1050.

General Remarks.

Conditional contracts for the sale of electrical equipment for street railways must be acknowledged and be recorded within thirty days after date of the contract in the miscellaneous record book of the county recorder of the county where such railway is located and operates. Thornton's Statutes, §§ 5642-4.

Conditional contracts for the sale of steam railway equipment must be acknowledged and recorded within sixty days from their date in the office of the Secretary of State. Thornton's Statutes, §§ 5558-60.

INDIAN TERRITORY.

Legal Status of Conditional Contracts of Sale.

The laws of Arkansas as compiled in Mansfield's Digest, have been extended to the Indian Territory by Act of Congress. Conditional contracts of sale are recognized by these laws. Mansfield's Digest, § 4750.

How Executed.

The contract must be in writing signed by the vendee but does not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

It is not definitely settled that such a contract must be either acknowledged by the vendee or vendor or be proven by a subscribing witness even though it is to be filed or recorded.

Recording or Filing.

The vendor's lien under a conditional contract of sale is valid as between the parties to the contract without re-

ording or filing. Also it is the opinion of many attorneys that such a contract is valid as against all persons without either recording or filing.

If, however, the contract is to be filed so that no question can be raised as to vendor's title when the rights of third parties intervene, it should be signed by a subscribing witness and be sworn to by him. The original contract may then be filed with the clerk of the United States District Court or his deputies in the district where the vendee resides.

Most of the recording officers of the Indian Territory will accept a contract of conditional sale and file it even though it be only signed by the vendee without acknowledgment by him; and also where it is not signed or proven by a subscribing witness. Such filing will at least give the appearance of legality and that in most cases has the desired effect. On such contract should be written the words "This instrument to be filed but not recorded" and such endorsement must be signed by the vendor, his agent or attorney. The contract when duly acknowledged or proven may be recorded if desired but no special advantage is secured thereby. Mansfield's Digest, § 4750.

Recording Fee.

The fee to a recording officer is twenty-five cents for filing such a contract. Mansfield's Digest, § 4756.

Re-recording or Renewal.

Such a contract if filed must be renewed within thirty days from the end of one year from the previous filing. Such renewal is made by filing in the office where the original filing was made, a certified or sworn copy of the contract accompanied by an affidavit of the vendor, his agent or attorney, as to the amount due. The fee for such renewal is ten cents. Mansfield's Digest, §§ 4751, 4756.

Discharge.

Such a contract must be discharged after payment upon demand. The vendor is liable in event of failure for damages not exceeding the amount of the contract. Mansfield's Digest, §§ 4746, 4755, 4757.

Landlord's Lien.

A landlord has no lien for rent upon property held under conditional contract of sale, placed in his building. Mansfield's Digest, § 4453.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of or remove, or to aid or abet in the removal of property covered by chattel mortgage or deed of trust or conditional contract of sale, from the state or county where such instrument is filed. The crime is punishable upon conviction by imprisonment for a period not less than one nor more than two years at the discretion of the jury trying the case. Mansfield's Digest, §§ 1693, 1694.

Money Judgment or Replevin.

There has been no determination as to whether or not a money judgment can be taken and the property afterwards replevined if no collection is made.

Fixtures.

The question of a vendor's right under a conditional contract of sale where the property has been attached to a building, has not been passed upon by the courts.

Forms.**PROOF BY SUBSCRIBING WITNESS.**

INDIAN TERRITORY, }
 3RD JUDICIAL DIV. } ss.:

On this 5th day of June, 1907, personally appeared before me William Parks, personally known to me and to me known to be one of the witnesses whose name is subscribed to the foregoing instrument and being by me duly sworn, did state on his oath ¹ that he saw Jere. B. Hawkins, the vendee, subscribe such instrument and that he subscribed the same as witness at the request of the vendee.

Witness my hand and seal this 5th day of June, 1907.

MARCUS ADAMS,
 Notary Public, etc.

{ NOTARIAL }
 { SEAL. }

ACKNOWLEDGMENT BY VENDEE.

INDIAN TERRITORY, }
 CHICKASAW NATION. } ss.:

On this 18th day of May, 1907, personally appeared before me Walter C. Smith to me known and known to me to be the person described in and who executed the foregoing conveyance and stated and acknowledged that he did execute the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and official seal on the day in this certificate first above written.

ARCHIE PERKINS,
 Notary Public, etc.

{ NOTARIAL }
 { SEAL. }

¹ or "that the vendee acknowledged in his presence, that he did subscribe and execute such instrument for the purposes and consideration therein mentioned."

Officers Before Whom Acknowledgments May be Taken.

Within the Territory. Judges or clerks of courts; United States commissioners; notaries public.

Without the Territory but Within the United States.
The clerk of any state, territorial or United States court having a seal; notaries public.

AFFIDAVIT FOR REFILING.

STATE OF NEW YORK, }
COUNTY OF ERIE. } ss.:

Harvey G. Bush, being duly sworn, says he is the Assistant Treasurer of the Cary Safe Company, a corporation, the vendor named in the written contract, a true copy of which is hereto attached, that of the amount specified to be paid for the safe described in such contract, there is unpaid to said vendor, the sum of Fifty Dollars.

HARVEY G. BUSH.

Subscribed and sworn to before me
this 24th day of May, 1907.

HENRY W. CARR,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

112 CONDITIONAL SALES (INDIAN TERRITORY).

IOWA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute in this state. Code of 1897, §§ 2905, 2906.

How Executed.

A conditional contract of sale must be in writing signed by the vendee, and in order that it may be filed for record must be signed and acknowledged by the vendor in person. This is the only state in which such a requirement is in force. Code of 1897, §§ 2905, 2906.

Acknowledgment or Proof.

A conditional contract of sale is valid as between the parties thereto without any formality in the way of acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third persons, it is necessary that the contract be filed for record. The seller of the goods, in other words the vendor, may acknowledge the due execution of such a contract which entitles it to be filed for record. It is not necessary to secure the acknowledgment of the vendee or to have the contract signed or proven by a subscribing witness. Code of 1897, §§ 2905, 2906.

Recording or Filing.

The original contract duly signed by the vendee, and executed and acknowledged by the vendor, must in order to hold title as against third persons, be filed for record with the

county recorder in the county where the holder of the property resides. There is no special provision as to time, but the recording should be made before the vendee gets possession of the property, if possible. Code of 1897, §§ 2905, 2906, 2926, 2942-48, 2959; Nat. Cash Register Co. v. Schwab, 111 Iowa, 605.

Recording Fee.

Fee to the recording officer is fifty cents for an instrument of four hundred words or less, and ten cents for each additional one hundred words or part thereof. Code of 1897, § 498.

Re-recording or Renewal.

When so recorded such a contract is valid for ten years. There is no provision for re-recording or renewal.

Discharge.

When the contract is paid in full it must be discharged from record within thirty days after request. The penalty for failure to release is a fine of \$25.00. Fee for discharge is fifty cents. Code of 1897, §§ 498, 4295.

Landlord's Lien.

A landlord has no lien for rent upon property placed in his building. Code of 1897, § 2992.

Criminal Liability of Vendee for Disposal of Property.

It is a crime, punishable the same as larceny, to dispose of or destroy property held under chattel mortgage. There appears to be no special law making it a crime to dispose of property held under conditional contract of sale although it might be punishable as embezzlement. Code of 1897, §§ 4841, 4852.

Money Judgment or Replevin.

If the vendor of goods conditionally sold brings action for a money judgment he is deemed to have waived his lien or title thereby and cannot afterwards replevin the property. *Richards v. Schreiber et al*, 98 Iowa 422, or 67 N. W. 569.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the vendor is entitled to take possession upon non-payment provided the contract has been filed for record.

Where the article has become so incorporated into the building as to become a material part thereof, the vendor would undoubtedly not be permitted to take possession but could enforce his rights in a court of equity against the building itself. *Snowden v. Craig*, 26 Ia. 156; *Hull v. Alexander*, 26 Ia. 569; *Denham v. Sankey*, 38 Ia. 269; *First National Bank v. Elmore*, 52 Ia. 541; *Miller v. Wilson*, 71 Ia. 610.

General Remarks.

Conditional contracts of sale covering railroad equipment must be in writing signed by all parties, and in order to be valid as to third persons must be acknowledged by the vendee, lessee or bailee and be filed for record in the office of the Secretary of State. Each car or engine so sold shall have plainly marked on each side thereof the name of the vendor, lessor or bailor, followed by the word "Vendor," "Lessor" or "Bailor," as the case may be. Fee for recording such contract, one dollar. Code of 1897, §§ 2051, 2052.

Forms.**ACKNOWLEDGMENT BY VENDOR IN PERSON.**

STATE OF IOWA, }
COUNTY OF KEOKUK. } ss.:

On this 10th day of May, A. D. 1907, before me personally appeared Fred. E. Marsh, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he executed same as his voluntary act and deed.

HENRY HUTCHINS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

ACKNOWLEDGMENT BY CORPORATION.

STATE OF IOWA, }
COUNTY OF MUSCATINE. } ss.:

On this 7th day of March, A. D. 1907, before me appeared William Parker, to me personally known, who being by me duly sworn,¹ did say that he is the Treasurer of the Little Falls Furniture Company and that the seal² affixed to said instrument is the corporation seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors,³ and said William Parker acknowledged said instrument to be the voluntary act and deed of said corporation.

EARLE H. DORMAN,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

¹ "affirmed" may be substituted if desired.

² In case the corporation has no corporation seal, omit the words "the seal, etc." and add at the end of the affidavit the words "and that said corporation has no corporation seal".

³ or "Trustees" as the case may be.

Officers Before Whom Acknowledgments May be Taken.

Within the State. A judge or clerk of any court of record; a county auditor or deputy; a justice of the peace or a notary public within his county or in an adjoining county within which he has filed a certificate of his appointment.

Without the State but Within the United States. A commissioner of deeds appointed by the Governor of Iowa; any notary public; a judge of any court of record or any officer holding the seal thereof; any justice of the peace or any other officer authorized to take acknowledgments, but in any of these latter cases the official character of the officer acting and the genuineness of his signature must be duly certified under the seal of court by the judge or clerk of a court of record of the county or district in which the acknowledgment is taken. The general form of certificate to be used in such cases is as follows:

CERTIFICATE OF COUNTY CLERK.

STATE OF OHIO, }
COUNTY OF CLERMONT.} ss.:

I, Edward Eckhart, Clerk of the County Court in and for said County, which court is a court of record having a seal, do hereby certify that Harrison C. Wellman, by and before whom the foregoing acknowledgment was taken, was at the time of taking same a Notary Public residing in said County and was duly authorized by the laws of said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the acknowledgment thereto are in due form of law; and, further, that I am well acquainted with the handwriting of said Harrison C. Wellman and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In Witness Whereof I have hereunto set my hand and
affixed the seal of the said Court this 8th day of March,
A. D. 1907.

{SEAL OF}
{ COURT. }

FRANKLIN MAY,
Clerk of the County Court,
of Clermont County.

KANSAS.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. General Statutes, 1901, § 4257.

How Executed.

They must be in writing signed by the vendee, but need not be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. General Statutes, 1901, § 4257.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without further formality in the way of acknowledgment or proof, or filing or recording; but in order to make it valid and to hold title as against third parties, the contract must be filed. It is not necessary that the instrument should be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. General Statutes, 1901, § 4257.

Recording or Filing.

The original contract, duly executed by the vendee, or a certified copy thereof, should be filed in order to hold title as against third parties. There is no provision for recording.

No definite time is prescribed within which such a contract must be filed, but in order to be valid beyond question as to all persons it should be filed before the vendee gets possession of the property. The contract should be filed with the register of deeds both in the county in which the property is kept and also in the county where the vendee resides if within the state. Where both of these counties are the same only one filing is necessary. General Statutes, 1901, § 4257.

Filing Fee.

The register of deeds is entitled to a fee of twenty-five cents for filing such a contract. General Statutes, 1901, § 3035.

Re-recording or Renewal.

Such a contract does not need to be refiled or renewed and is valid for the term of five years. General Statutes, 1901, § 4257.

Discharge.

After payment a conditional contract of sale must be discharged from record within thirty days after demand therefor, under penalty of \$100.00 fine and attorney's fees and such other damages as the evidence in the case will warrant. There are no fees for making such a discharge. General Statutes, 1901, §§ 3035, 4224, 4251, 4257; Statutes of 1905; § 3108.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon property found located on his premises, and he certainly has no rights against property held under conditional contract of sale where that contract was duly filed before the article was moved into his building.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of, destroy, conceal or injure property held under chattel mortgage, punishable as petty larceny where value of the property is \$20.00 or less and grand larceny where the value is more than \$20.00. There is no special provision of law making it a crime to destroy, conceal or injure property covered by conditional contract of sale. (See pp. 13, 14.) General Statutes, 1901, § 4259.

Money Judgment or Replevin.

Where the vendor under conditional contract of sale brings an action for a money judgment on his contract, this is deemed to be a waiver of his lien upon or title in the property and he cannot afterwards replevin it, even though the judgment is not paid. *Moline Plow Co. v. Rodgers*, 53 Kansas 743, or 37 Pac. 111.

Fixtures.

It is well settled that upon non-payment the vendor has the right to take possession of property sold under conditional contract of sale and attached to a building if such property can be removed without material damage to the building or itself. *Marshall v. Bacheldor*, 47 Kan. 442; *Eves v. Estes*, 10 Kan. 314; *Rowand v. Anderson*, 33 Kan. 264.

KENTUCKY.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are not provided for by statute law in this state, but they are held by the courts to be an absolute sale of the property with a mortgage back. In *re Sewell*, 8 Am. B. R. 133; *Wicks Bros. v. McConnell*, 102 Ky. 434; *White Sewing Machine Co. v. Connor*, 111 Ky. 827; *Baldwin & Co. v. Crow et al*, 86 Ky. 679; *Barney and Smith Mfg. Co. v. Hart*, 8 Ky. Law Rep. 223, or 1 S. W. 414.

How Executed.

They must be in writing signed by the vendee but need not be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties, it should unquestionably be recorded. In order that such a contract may be recorded the vendee must acknowledge same in person or otherwise it must be signed by two subscribing witnesses, either one of whom may prove the execution of the contract and the attestation of the other witness. Statutes, 1903, §§ 495, 496, 501.

Recording or Filing.

The original contract, duly signed by the vendee, must be recorded in order to hold title as against third parties. There is no provision for filing.

No express provision exists as to the time within which such a contract must be recorded, but in order to hold title as against all persons and all conditions it should be recorded before the vendee secures possession.

The recording officer is the clerk of the county where the property or the greater part thereof is situated. If the vendee does not acknowledge the contract in person, two persons must sign the contract as subscribing witnesses and one of these must swear to its execution to entitle the contract to be recorded. The salesman who secures the order for the vendor may act as such subscribing witness, provided he does not also execute the contract for and on behalf of the vendor. If such a contract has been signed by two subscribing witnesses and it becomes necessary to record it, the original instrument may be sent to the witness who is friendly to the vendor, who makes oath that he saw the same duly signed and executed by the vendee and that he signed it himself as a witness and that the other subscribing witness also saw the contract executed and likewise signed his name thereto. The instrument may then be recorded. It will be seen that by this method a contract of conditional sale may be recorded without requesting the vendee to appear before a notary public, and, in fact, without his knowledge or consent in any particular. Statutes, 1903, §§ 495, 496, 501.

Recording Fee.

The fee for recording such a contract is \$1.00, and in addition a tax of fifty cents to the state must be paid on each contract for the sum of \$50.00 or more. Statutes, 1903, §§ 1720, 4238.

Re-recording or Renewal.

The contract is valid for the term of fifteen years. There is no provision for re-recording or renewal.

Discharge.

There is no law providing for a discharge of such an instrument after payment. It is, however, always best upon request of the vendee or any other proper parties to discharge such a contract from record after payment in full. Statutes, 1903, § 498.

Landlord's Lien.

A landlord has no lien for rent upon property sold under conditional contract of sale, if the contract is made before such property is moved upon his premises. Where, however, the contract is made while the property is located on leased premises the landlord's lien for rent will be prior to such contract. Kentucky Statutes, § 2316.

Criminal Liability of Vendee for Disposal of Property.

Any person who shall sell, dispose of or convert to his or her own use, or the use of another, any money or property or other thing of value without consent of the owner thereof, shall be punished by confinement in the penitentiary for not less than one nor more than five years, if the money or property disposed of shall be of the value of \$20.00 or more; or be confined in the county jail for not less than one month nor more than twelve months if the value be less than \$20.00. Statutes, 1903, § 1358a.

Money Judgment or Replevin.

There has been no decision by the courts of this state as to whether or not a money judgment may be secured and the property afterwards be replevined if the judgment is not collected.

Fixtures.

The effect produced by attaching property held under conditional contract of sale to a building has not been determined. The probability is that where such a contract is duly recorded before the property becomes a fixture, the property can either be removed or an action in equity be brought to enforce the unpaid balance as a lien upon the building.

General Remarks.

Where property held under an unrecorded conditional contract of sale has been levied on under execution or attachment, its sale must be made subject to the vendor's lien if notice of this lien be given to the sheriff or other officer before sale takes place, provided, however, that if the contract was not recorded and the debt sued upon was contracted after vendee obtained possession, it will be presumed that the possession of vendee was relied upon as ownership in extending the credit and the vendor's lien is then subsequent to such debt. *Baldwin & Co. v. Crow et al*, 86 Ky. 679; *Wicks v. McConnell*, 102 Ky. 434.

Forms.**PROOF BY SUBSCRIBING WITNESS.**

COMMONWEALTH OF KENTUCKY, }
COUNTY OF CRITTENDEN. } ss.:

Proved by the oath of Eaton DeForest, subscribing witness, to be the act and deed of Edgar Dennis and who also proved the attestation of Henry Smith the other subscribing witness.

EATON DEFORREST.

Subscribed and sworn to before me
this 25th day of February, 1907.

{ NOTARIAL } MARTIN GARDNER,
{ SEAL. } Notary Public, etc.

ACKNOWLEDGMENT BY VENDEE.

COMMONWEALTH OF KENTUCKY, }
COUNTY OF MARSHALL. } ss.:

I, Joseph Harkness, a Notary Public, do certify that this instrument of writing by Marcus Wilkins was this day produced to me by the parties and was acknowledged by the said Marcus Wilkins to be his act and deed and he consented that the same might be recorded.

Given under my hand and seal of office this 24th day of May, 1907.

JOSEPH HARKNESS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. County clerks; deputy county clerks; notaries public.

Without the State but Within the United States. Any secretary of state; commissioners of deeds for Kentucky; judges, clerks or deputy clerks of courts under seal of court; mayors of cities; notaries public.

LOUISIANA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are specifically provided for by the statutes of this state, and a vendor under such a contract has certain rights not given to an ordinary creditor, in the nature of a vendor's privilege. The laws are very complex and it is not an easy matter to make a general rule which will apply in every case. Wolff's Revised Laws, p. 1337, §§ 1, 2; Merrick's Code, Arts. 2044, 2471, 3184-6, 3227-9.

How Executed.

Conditional contracts should be in writing signed by the vendee, but do not need to be signed by the vendor. The verbal sale of movable effects is valid but its testimonial proof must comply with the requirements of the title "Conventional Obligations." Merrick's Code, Arts. 1765-66, 2441.

Acknowledgment or Proof.

There would seem to be no provision of law by which such a contract covering movable property may be acknowledged or proven, or filed or recorded so as to make it valid as against all third parties.

Recording or Filing.

Where the contract covers movable property the filing or recording of such instrument does not seem to be provided for, and such action by a vendor or lessor cannot be relied upon to protect his interests as against third parties.

Landlord's Lien.

The laws of this state give to a landlord the right to hold personal property found on his premises as security for rent. Merrick's Code, Art. 3218.

Criminal Liability of Vendee for Disposal of Property.

Whoever shall purchase goods, and shall sell or pledge same to another and use the proceeds thereof for any other purpose than to pay the seller or vendor with intent to cheat or defraud such seller, or vendor, or whoever shall conceal such goods, is guilty of a felony, and upon conviction shall be punished by a fine not exceeding \$5,000.00 or by imprisonment in the penitentiary not exceeding five years, or both. Wolff's Revised Laws, p. 345, § 825.

Money Judgment.

The courts of this state have not passed upon the question whether a vendor may bring action for a money judgment on his contract and if unable to collect such judgment thereafter replevin the property.

Fixtures.

A heater sold under conditional contract of sale (not recorded) was placed in a building covered by real estate mortgage. Upon default under the conditional sale contract the vendor sought to remove the heater and the mortgagee of the premises objected. In an action brought to determine the rights of the parties it was held that such parts of the heater as could be removed without great injury to the building might be taken out, but that the pipes in the walls could not be removed. The question as to whether or not the conditional vendor might have a lien on the building for the value of these pipes was not decided. *Baldwin v. Young et al*, 17 So. 883.

When Vendor or Vendee Loses.

Where property held under conditional contract of sale is injured or destroyed while in possession of vendee, he may elect to return same or may keep and pay for it less the damages. Merrick's Code, Art. 2471.

General Remarks.

The law of privilege in this state is broad, embracing many classes or kinds of preference with no very definite or distinct provisions to guide the person making sale under conditional contract,—not even where a lease form is used with title to pass after a specified payment of rent. Reputable attorneys in the state give different opinions on the same facts, but it seems to be conceded by all that a contract reserving title in vendor until certain payments are made or other conditions performed, is merely a vendor's privilege. Wolff's Revised Laws, p. 1337, § 2.

A provision exists in the Code that a privilege may be recorded and thus be notice to third parties (Merrick's Code, Art. 3274) and yet resident attorneys are authority for the statement that a conditional contract of sale does not affect an innocent third party who has purchased movable property covered by same in good faith and for value from the person in possession. Just as positive a statement is made by others that a lease contract is valid as to all parties (excepting a landlord's lien for rent) and they make no mention of recording such a contract. The reason for this uncertainty seems to lie in the fact that the constitution provides that such a contract may be recorded but no state law has been enacted requiring or providing for such record where the property is movable.

There is some authority for the position that the vendee has the right to accept or reject the property for which he con-

tracted after having the opportunity to inspect it within the State of Louisiana.

A conditional contract of sale properly executed and accepted is valid for the term of five years between the parties thereto. Constitution of 1877, Art. 177; Constitution of 1898, Arts. 186, 187; *Flower & One v. Skipworth*, 45 Annual 899; *Kuhn & One v. Embry & One*, 35 Annual 488; *Gumble & Co. v. Beers et al*, 36 Annual 484; *Mullan v. Creditors*, 39 Annual 399.

MAINE.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Revised Statutes, 1903, Ch. 113, § 5; Peabody v. Maguire, 79 Me. 585.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Revised Statutes, 1903, Ch. 113, § 5.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or recording or filing, but in order to make it valid and to hold title as against third parties the contract must be recorded. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be recorded. Revised Statutes, 1903, Ch. 113, § 5.

Recording or Filing.

The original contract duly signed by the vendee should be recorded. There is no provision for filing.

There is no express requirement as to the time within which the contract must be recorded. It should, however, be recorded, if possible, before the vendee secures possession of the property.

The proper recording officer is the clerk of the town in which the vendee or purchaser resides at the time when the contract is made. Revised Statutes, 1903, Ch. 113, § 5.

Filing Fee.

Fee to the recording officer is twenty-five cents where the instrument does not exceed two hundred and fifty words, or fifty cents where the number of words does exceed two hundred and fifty but is not more than five hundred, and fifteen cents for each additional one hundred words or part thereof over five hundred. Revised Statutes, 1903, Ch. 117, § 20.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is no provision for discharge of such a contract after payment except where the property affected is railroad equipment, in which case the contract must be recorded with the Secretary of State under special provisions of law. Revised Statutes, 1903, Ch. 52, §§ 95-98.

Landlord's Lien.

There seems to be no express provision giving a landlord a lien for rent on property found on his premises. He certainly would have no lien where the contract was duly recorded before such property was delivered to the vendee. Revised Statutes, 1903, Ch. 93, §§ 44-45.

Criminal Liability of Vendee for Disposal of Property.

Whoever knowingly and with intent to defraud, sells, conveys, mortgages or pledges to another, personal property on which there is an existing mortgage, or to which he has no title, without notice to the purchaser of the existence of such mortgage or such lack of title, is guilty of cheating by false pretenses, and upon conviction shall be punished by imprisonment for not more than seven years, or by a fine not exceeding \$500.00. Revised Statutes, 1903, Ch. 127, § 1.

Money Judgment or Replevin.

The question as to whether or no the vendor has the right to bring an action for a money judgment and afterwards replevin the property if no collection is made, has not been passed upon by the courts in this state.

Fixtures.

There has been a general determination by the courts as to the effect of attaching to a building property sold under conditional contract of sale, and it seems safe to say that where the contract has been duly recorded before the property became a fixture, it could either be taken possession of or a lien be enforced against the building for the unpaid balance. *Howkins v. Hersey*, 86 Me. 394.

General Remarks.

Where railroad equipment is sold under a conditional contract of sale such contract must be signed by all parties and be sworn to by the vendee, after which in order to retain title as against third parties, the original must be recorded in the office of the Secretary of State. Each engine, car, etc., must have plainly marked on each side thereof the name of

the vendor, lessor or bailor, followed by the word "Vendor," "Lessor" or "Bailor," as the case may be. Revised Statutes, 1903, Ch. 52, §§ 95-98.

A vendee under conditional contract of sale has a right of redemption within sixty days after the property is taken from his possession. Revised Statutes, 1903, Ch. 93, §§ 5, 6; Ch. 113, § 5.

MARYLAND.

Legal Status of Conditional Contracts of Sale.

There exists no special statute in this state regulating conditional contracts of sale, but they are recognized by the courts. *Central Trust Co. v. Arctic Machine Mfg. Co.*, 77 Md. 222; *Hall v. Hinks*, 21 Md. 418; *Lincoln v. Quynn et al*, 68 Md. 299.

How Executed.

The contract must be in writing signed by the vendee but does not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without any formality in the way of acknowledgment or proof, or filing or recording and as to all parties having notice; also as to an assignee, but in order to make it valid and to hold title as against other third parties it is necessary that the contract should be recorded. In order that the instrument may be so recorded it must be acknowledged by the vendee in person and have attached thereto, to be recorded therewith, the affidavit of the vendee or of his agent which must recite in these words, "that the consideration of said mortgage is

true and bona fide as therein set forth and also does make oath that he has not requested the mortgagor, his agent or attorney to pay the state tax." There is no provision for acknowledgment by the vendor or proof by subscribing witness. Act of 1898, Ch. 275; *Central Trust Co. v. Arctic Machine Mfg. Co.*, 77 Md. 222; *Dias v. Chickering*, 64 Md. 348; *Lincoln v. Quynn et al*, 68 Md. 299; *Hall v. Hinks*, 21 Md. 418.

Recording or Filing.

Where the contract has been duly executed and acknowledged by the vendee in person and the affidavit heretofore described is attached to or endorsed thereon, it may be recorded and is then valid as against all third parties. There is no provision for filing. The proper recording officer is the circuit court clerk in the county where the property is situated, or if in the City of Baltimore it must be recorded in the city clerk's office. General Laws of Md., 1888, Art. 17, § 51.

Recording Fee.

Fees to a recording officer are one cent for each ten words. Supplement to the General Laws of Maryland, Art. 36, § 12.

Re-recording or Renewal.

The contract is valid for the term of three years. There is no provision for re-recording or renewal.

Discharge.

Provision is made for discharge of such a contract from record after payment, but no express penalty is provided for failure to make such discharge. It is, however, always advisable that such a contract should be discharged after payment upon request by the proper party, as any person damaged by such failure could undoubtedly recover his actual loss. General Laws of Md., 1888, Art. 21, § 50.

Landlord's Lien.

A landlord in this state has a lien for rent upon personal property found on his premises. If, however, a conditional contract of sale is duly acknowledged and recorded before the property covered thereby is moved into the landlord's building, his lien for rent is subsequent to such contract. General Laws of Md., 1888, Art. 53, §§ 8-20.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property held under conditional contract of sale, punishable by imprisonment in jail for not more than six months or by fine of not more than \$500.00 or by both. Supplement to the General Laws, Art. 27, § 111.

Money Judgment or Replevin.

The question as to whether or not a money judgment may be taken covering the amount unpaid under a conditional contract of sale, and, if said judgment cannot be collected, the vendor thereafter replevin the property, has not been passed upon by the courts.

Fixtures.

It is a well settled rule of law in this state, that a vendor of property under conditional contract of sale may recover possession upon non-payment, even though the property be affixed to a building with a great degree of firmness and permanency. And this is true as to property which has passed into the hands of third parties even though the contract be not recorded provided any fact or circumstance exists which would tend to put the third party on enquiry as to the ownership of such property. Where the property has been incorporated into a building in such manner as to become an essential part thereof, it seems probable that an action in equity must be brought

to charge the unpaid balance as a lien upon the building. *Central Trust Co. v. Arctic Machine Mfg. Co.*, 77 Md. 222; *Walker v. Shindle*, 58 Md. 360.

General Remarks.

Railroad equipment may be sold under conditional contract of sale but in order to be valid as to third parties the contract must be in writing, must be for a term not exceeding ten years and must be acknowledged and recorded, in the same manner as a deed of real estate, in the office of the clerk of the circuit court for the county where the vendor or lessor has his principal office. General Laws of Md., 1888, Art. 17, § 51; Art. 21, § 10.

It is well established by court decisions in this state that an assignee under state law gets no better title than the assignor had and cannot hold property as against a conditional vendor no matter whether the contract is recorded or not. No determination has been made as to the rights of a trustee in bankruptcy. *Central Trust Co. v. Arctic Machine Mfg. Co.*, 77 Md. 222.

Forms.

OATH TO BE ENDORSED ON MORTGAGE.

STATE OF MARYLAND, }
COUNTY OF CARROLL. } ss.:

Thomas F. Green, being duly sworn, says he is the mortgagee named in the foregoing mortgage and that the consideration in such mortgage is true and bona fide as therein set forth; and also does make oath that he has not requested the mortgagor, his agent or attorney to pay the state tax.

THOMAS F. GREEN.

Sworn to before me this 16th
day of April, 1907.

WALTER TURNER,

Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

ACKNOWLEDGMENT BY VENDEE.

STATE OF MARYLAND, }
COUNTY OF BALTIMORE. } ss.:

On this 5th day of June, in the year 1907, before me, a Notary Public in and for the said State and County, personally came Warren McComb, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his act.

HOWARD WILSON,

Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. A judge of the orphans', circuit or superior court, or of the common pleas or circuit court of Baltimore City; a notary public; a justice of the peace, whose official character and signature must be certified by clerk of circuit or superior court under the official seal.

Without the State but Within the United States. A judge of any court of the United States or of any state or territorial court having a seal; a commissioner of the state of Maryland, or a notary public.

MASSACHUSETTS.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Revised Laws of Massachusetts, Ch. 198, §§ 11-13; *Benner v. Puffer*, 114 Mass. 376; *Robinson v. Besarick*, 156 Mass. 141; *Cogill v. Hartford & New Haven R. R.*, 3 Gray 545.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Where a contract covers household furniture or household effects, a copy must be delivered to the vendee at the time the contract is made and thirty days' notice in writing must be given him of intention to repossess, which notice shall contain an itemized statement of the payments made and the amount due. If the vendee has paid seventy-five per cent. or more under his contract and so demands, the sale must be at public auction and any surplus after paying the vendor's claims and all lawful charges and expenses, must be turned over to vendee. All payments made under contract for household goods or effects must be endorsed on the vendee's copy if he so demands. Revised Laws of Massachusetts, Ch. 198, §§ 11-13.

Acknowledgment or Proof.

There is no provision for acknowledgment of such an instrument by the vendee or the vendor, nor for signing or proof by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing such a contract. It is, however, valid as to all parties for the period of six years without recording or filing, except where the property is attached to a building in such a manner as to become a material part thereof.

Landlord's Lien.

There is no express provision that a landlord shall have a lien for rent on property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

A vendee or lessee of personal property who shall sell or convey same is punishable upon conviction by a fine of not more than \$100.00, or imprisonment for not more than one year. Revised Laws of Massachusetts, Ch. 208, § 73.

Money Judgment or Replevin.

Where the vendor of property sold under conditional contract elects to bring action for a money judgment, he cannot afterwards maintain an action in replevin for possession of the property. *White v. Solmon*, 164 Mass. 516; *Whitney v. Abbott*, 191 Mass. 59; *Bailey v. Hervey & One*, 135 Mass. 172.

Fixtures.

There has been a large amount of litigation in this state over the rights of interested parties where property delivered under conditional contract of sale has been attached to a building. In earlier decisions the rule was made that where such property was actually fastened to a building, no matter in how slight a manner, the vendor lost all rights and must look to the vendee in person for payment. This rule has been largely modified and in a very recent case the law is set forth substantially as follows:

Where the personal property is attached to a building in such manner that it may be removed without material injury to itself or to the building, the vendor may have possession; but where same becomes incorporated into the building or fastened thereto in such a manner that its removal will cause great injury to the building or to the property, it cannot be taken possession of. Where the vendor is denied return of his property he should bring an action in equity to have the balance unpaid under his contract declared a lien upon the building itself. *Wentworth v. Woods Machine Co.*, 163 Mass. 33; also *Ridgway Stove Co. v. Way*, 141 Mass. 557; *Carpenter v. Walker*, 140 Mass. 416, or 5 N. E. 160; *McGuire v. Park*, 140 Mass. 21; *Hanrahan v. O'Reilly*, 102 Mass. 201; *Southbridge Savings Bank v. Exeter Machine Works*, 127 Mass. 542; *Clay v. Owen*, 15 Gray 522; *Pierce v. George*, 108 Mass. 78; *Smith Co. v. Servin*, 130 Mass. 511; *Southbridge Bk. v. Mason*, 147 Mass. 500; *Meagher v. Hayes*, 152 Mass. 228.

When Vendor or Vendee Loses.

The destruction of property in the possession of vendee under conditional contract of sale relieves him from further payment if same occurs without his fault. *Swallow v. Emery & One*, 111 Mass. 355.

General Remarks.

Railroad or street railway rolling stock may be sold under conditional contract of sale but no such contract is valid as against any subsequent attaching creditor or subsequent bona fide purchaser for value, unless it be in writing and executed by the parties thereto and duly acknowledged in the same manner as deeds are acknowledged by the vendee, lessee or bailee before a magistrate authorized to take acknowledgment of deeds, and thereafter recorded in the office of the Secretary of the Commonwealth. Nor is such a contract valid as above stated unless each locomotive, engine or car so sold, leased, hired or contracted for has the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word, "Vendor," "Lessor" or "Bailor" as the case may be. Revised Laws of Massachusetts, Ch. 111, § 75; *Lorain Steel Co. v. Norfolk R. R.*, 187 Mass. 500.

The fee for recording such a contract is \$5.00. The fee for discharging same, \$1.00. Revised Laws of Massachusetts, Ch. 111, § 76.

MICHIGAN.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are not provided for by statute law except as to railroad equipment but are recognized and firmly established by court decisions. Compiled Laws of 1897, § 6336; *Course v. Tregent*, 11 Mich. 65.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision for acknowledgment of such an instrument by the vendee or vendor, or for signing or proof by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing conditional contracts of sale but they are valid as to all parties for the period of six years without recording or filing, except where the property is attached to a building in such a manner as to become a material part thereof. *Am. Harrow Co. v. Deyo*, 96 N. W. 1055.

Landlord's Lien.

There is no provision that a landlord shall have a lien for rent upon personal property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

Any person who shall embezzle or fraudulently remove, conceal, or dispose of property held under conditional contract of sale, shall be guilty of a felony where the value of the property is \$25.00 or more; and if convicted shall be punished by imprisonment in the state's prison for not more than two years, or by a fine of not more than \$250.00, or by imprisonment in the county jail for not more than six months. If the value of the property is less than \$25.00, the crime shall be a misdemeanor, punishable by a fine of not more than \$100.00 or imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. Compiled Laws of 1897, § 11621.

Money Judgment or Replevin.

It has been decided by the courts that a vendor under conditional contract of sale who recovers a money judgment for the amount due on his contract, cannot thereafter replevin the property. *Button v. Trader*, 75 Mich. 295.

Fixtures.

Property sold under conditional contract of sale and fastened to a building in such a manner that it can be removed without material injury to the building or itself, can be taken possession of if the contract price is not paid; but where it has become attached to a building in such manner as to make it a material part thereof and where it cannot be removed without great injury to the building or to itself, the property cannot be taken possession of and an action in equity should be

brought to enforce a lien against the building itself for the unpaid balance. *Gill v. De Armant*, 90 Mich. 425; *Jenkes v. Colwell*, 66 Mich. 420; *Burrill v. Wilcox Lumber Co.*, 65 Mich. 571; *Ingersoll v. Barnes*, 47 Mich. 104; *Crippin v. Morrison*, 13 Mich. 23.

General Remarks.

Railroad equipment may be contracted for under conditional contract of sale but in order to be valid as to third parties same must be in writing, be acknowledged by the vendee and be filed for record in the office of the Secretary of State. Each car, engine or other property must have plainly marked on each side the name of the lessor, vendor or bailor followed by the word "Owner," "Lessor," or "Bailor" as the case may be. Compiled Laws of 1897, §§ 6336, 6337.

MINNESOTA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Statutes of Minnesota, § 4148.

How Executed.

It is not absolutely essential that a contract of conditional sale should be in writing as an oral agreement of the kind is declared by law to be valid. A written contract should, however, always be secured if possible to prevent any question being raised later as to the terms of the agreement.

Where the contract is in writing it should be signed by the vendee but need not be executed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or furnishing the goods being sufficient to make it a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Statutes of Minnesota, § 4148.

Acknowledgment or Proof.

A contract of conditional sale is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties, it is necessary that the written contract or a true copy thereof should be filed. If the contract is oral a memorandum in writing should be filed setting forth the terms and conditions thereof. It is not necessary that the instrument should be acknowledged by the vendee or vendor,

nor that it be signed or proven by a subscribing witness in order to be so filed. But undoubtedly the written memorandum of an oral contract should be duly signed by the vendor. Statutes of Minnesota, 4148.

Recording or Filing.

Where the written contract has been duly signed by the vendee, the original or a true copy must be filed in order to hold title as against third parties. There is no provision for recording.

Where the agreement has been made orally, which should always be avoided if possible, the vendor may prepare and file a written memorandum stating the terms and conditions of the agreement. There is no express form provided but such instrument should contain the date of agreement, the names of the parties, a statement of the property contracted for, the amount to be paid and when and how, and a clause should appear stating that all title to the property in question is retained in the vendor until full payment is made or until the other conditions of the agreement are performed. Such memorandum should be signed by the vendor in person.

There is no definite time within which the contract or memorandum should be filed but in order to avoid all question as to the rights of third parties the filing should be effected before the vendee takes possession of the property.

The officer with whom the contract or memorandum is filed is the clerk or recorder of the township, village or city where the vendee resides at the time the agreement is made. Statutes of Minnesota, §§ 4148, 4149; Statutes of Minnesota, 1905, § 3476.

Filing Fee.

Fee to the filing officer for services rendered is ten cents. Statutes of Minnesota, § 4153.

Re-recording or Renewal.

There is an express statutory provision in the case of a chattel mortgage that same shall be renewed within thirty days of the end of two years from the date when due, and in the same manner each year thereafter, and this may be done by filing an affidavit of the mortgagee showing the amount unpaid.

There is no provision for renewal of a conditional contract of sale which is declared by statute to be valid for the term of six years from the filing thereof. Statutes of Minnesota, §§ 4129-4147; Statutes of Minnesota, 1905, § 3477.

Discharge.

When payment of a conditional contract of sale is made, the vendor or his assignee must furnish the vendee or his assignee a certificate in writing setting forth the date of the instrument and that same has been paid and discharged in full, and on delivery of said certificate to the officer with whom such instrument is filed the officer must deliver said instrument to the party who produces the certificate and must then file the certificate of payment in his office instead and write "SATISFIED" in the book where the contract of sale was entered.

There is no express penalty for failure to furnish such a release but any person injured by such failure could undoubtedly collect his actual damages. The fee for discharging such a contract is ten cents. Statutes of Minnesota, §§ 4152, 4153.

Landlord's Lien.

There is no provision of law by which a landlord is given a lien for rent on personal property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

There is no express provision of law making it a crime to sell, conceal or dispose of property held under conditional contract of sale. The definition of larceny is, however, it would seem, broad enough to cover such a proceeding. Statutes of Minnesota, § 6709, Subdiv. 2.

Money Judgment or Replevin.

Where a money judgment is obtained for the purchase price, the lien of a conditional contract of sale is deemed to be waived and the vendor loses his right to retake the property. *Alden v. Dyer & Bro.*, 99 N. W. 784, or 92 Minn. 134; *Minn. Harvester Works v. Hally*, 27 Minn. 495; *Altman v. Olson*, 43 Minn. 409; *Keystone Mfg. Co. v. Cassellius*, 74 Minn. 115, or 76 N. W. 1028.

Fixtures.

It has been determined by several decisions that where property held under conditional contract of sale has been attached to a building in such a manner that it may be removed without material damage to the building or to itself, the vendor is entitled to possession. Where the property has been incorporated into a building in such a manner that its removal will cause great injury to the building or to the property itself, it cannot be taken possession of and the vendor must resort to an action in equity to have the balance unpaid under the contract declared a lien against the building. *Warner v. Kenning*, 25 Minn. 173; *St. Paul Furniture Co. v. Saur*, 63 N. W. 110; *Merchants Bank v. Stanton*, 55 Minn. 211; *Capehart v. Foster*, 61 Minn. 132; *Northwestern M. F. Ins. Co. v. George*, 77 Minn. 319.

Forms.**DISCHARGE BY INDIVIDUAL.**

Alfred Stevens does hereby certify that the provisions of a certain conditional contract of sale for (description of property) heretofore given by Sydney Clark of Austin, Mower County, Minnesota, to the said Alfred Stevens have been satisfied and the amount due thereunder paid in full, and the Recorder of the said City of Austin is hereby directed to cancel and discharge from record the said contract dated March 5th, 1906, and filed in his office on the tenth day of March, 1906.

ALFRED STEVENS.

Dated at Austin, Minnesota,
this 5th day of March, 1907.

DISCHARGE BY CORPORATION.

The Arlington Piano Company, a corporation duly organized under the laws of the State of Minnesota and having its principal place of business at St. Paul, Ramsey County, Minnesota, does hereby certify that the provisions of a certain conditional contract of sale for an upright piano (description of piano) heretofore given by Albert C. Woodson also of St. Paul, Minnesota, to said Vendor Company, have been satisfied and the amount due thereunder paid in full, and the City Clerk of St. Paul is hereby directed to cancel and discharge from record the said contract dated May 15, 1906, and filed in his office May 16, 1906.

In Witness Whereof the said Arlington Piano Company has caused this instrument to be executed at St. Paul, Minnesota, this 15th day of May, 1907.

ARLINGTON PIANO COMPANY,

BY WALTER C. THORPE,

Treasurer.

{ NOTARIAL }
{ SEAL. }

MISSISSIPPI.

Legal Status of Conditional Contracts of Sale.

There is no special statute in this state providing for conditional contracts of sale, but the validity of such a transaction is recognized in the nature of a vendor's lien. Code of 1892, § 4227; *Young v. Salle*, 83 Miss. 362; *Ketchum & One v. Brennan*, 53 Miss. 607; *Duke v. Shackelford*, 56 Miss. 552; *Gayden v. Tufts*, 68 Miss. 691.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Code of 1892, § 4227.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment, proof, filing or recording. But if the contract is not recorded and the vendee transacts business as a trader, or otherwise, with the addition of the words "Agent," "Factor," "& Company," "& Co.," or like words and fails to disclose the name of his principal or partner by a sign in letters easy to read placed conspicuously at the building where such business is transacted, or if the vendee transacts business in his own name without any such additions

when in fact he has an undisclosed partner, the law provides that the property, stock, money and choses in action used or required in such business shall, as to the creditors of any such person, be liable for his debts and be in all respects treated in favor of his creditors as his property. Code of 1892, § 4234.

Recording or Filing.

Within the period of three years from its date a contract of conditional sale is valid without recording or filing as to all persons, excepting a landlord for rent, and excepting as to creditors of a party who shall transact business as a trader or otherwise, with the addition of the word "Agent," "Factor," "& Company," or "& Co.," or like words and fail to disclose the name of his principal or partner by a sign in letters easily read placed conspicuously at the building where such business is transacted, or as to the creditors of a person who shall transact business in his own name without any such additions (where in fact he has a partner) and shall not disclose same by a sign as above. In such instances the contract must be recorded to hold title as against creditors and other third parties.

It may be noted that there is some authority for the position that where the article contracted for has the name of the vendor upon it followed by the word "Owner" this protects the title without recording. This is the opinion of reputable attorneys in the state but no statutory provisions or court decisions have been cited to substantiate their position.

A contract of conditional sale may be recorded if signed by one subscribing witness who takes his oath that he saw the vendee execute the instrument. This subscribing witness may be the salesman who secured the order provided he does not also sign the contract on behalf of the vendor. When such a contract has been duly signed by the vendee it may be sent to the subscribing witness and be proven by his oath and the

original contract be then recorded with the clerk of the chancery court in the county where the property is located. Code of 1892, §§ 2454, 2455, 2460, 4227, 4234; *Paine v. Hall Safe & Lock Co.*, 64 Miss. 175; *Schoolfield v. Wilkings*, 60 Miss. 238; *Harris v. Robson & One*, 68 Miss. 506; *Quin v. Myles*, 59 Miss. 375; *Gumble v. Coon*, 59 Miss. 264.

Recording Fee.

The fee of the recording officer is ten cents for each one hundred words. Four figures are considered as a word. Thompson's Code, § 1998.

Re-recording or Renewal.

Such a contract is valid for the period of six years. There is no provision of law providing for a re-recording or renewal.

Discharge.

There is no provision requiring that a contract of conditional sale shall be discharged from record after payment. It is, however, always advisable to release same upon proper demand, as any party interested could undoubtedly collect his actual damages resulting from a failure to discharge after demand.

Landlord's Lien.

The owner of a building into which property covered by conditional contract of sale is placed has a lien on such property for rent, provided the contract in question has not been recorded before such property is moved upon said premises. Even when recorded the landlord's lien extends to the interest of the vendee in the property. Code of 1892, §§ 2529, 2530.

Criminal Liability of Vendee for Disposal of Property.

There is no provision of law making it a crime to sell or dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

Where suit is brought for the purchase price under a conditional contract of sale and a judgment is obtained but not collected, the vendor may afterwards replevin the property. *Dederick v. Wolfe*, 68 Miss. 500; *McPherson v. Acme Lumber Co.*, 70 Miss. 649.

Fixtures.

It is a well established rule of law in this state that property sold under conditional contract of sale and fastened to a building can, if not paid for, be taken possession of by the vendor, provided the property may be removed without material injury to the building or to itself. If it has been incorporated into the building so that it cannot be removed without great injury, the vendor would undoubtedly have a right of action in equity to charge the balance unpaid as a lien upon the building itself. *Duke v. Shackelford*, 56 Miss. 552; *John Van Grange Co. v. Allen*, 7 So. 499.

When Vendor or Vendee Loses.

In a suit by vendor against vendee to recover the balance unpaid under a conditional contract of sale, it was decided that vendor had delivered possession and had thus performed his part of the contract and was entitled to receive payment in full even though the property had been destroyed. *Burnely v. Tufts*, 66 Miss. 48, or 14 Am. St. R. 540; *McPherson v. Acme Lumber Co.*, 70 Miss. 649.

Forms.**PROOF BY SUBSCRIBING WITNESS.**

STATE OF MISSISSIPPI, }
 COUNTY OF GRENADA. } ss.:

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Arthur Wright, who is personally known to me, and who having been by me duly sworn, deposes and says that he saw the within named Frank Armstrong, whose name is subscribed to the attached contract, sign and deliver the same on the day and date therein mentioned and that same was signed by him as a witness thereto.

ARTHUR WRIGHT.

Sworn to and subscribed before me this
 12th day of March, 1907.

HENRY P. ADAMS,
 Notary Public, etc.

{ NOTARIAL }
 { SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. A judge of any United States Court; a judge of the supreme or circuit courts; a chancellor; a clerk of any court of record; a notary public; a justice of the peace; a mayor of any city, town or village, or a member of the county board of supervisors.

Without the State, but Within the United States. Any judge of the United States supreme, circuit or district court; any judge or justice of the supreme or superior court of any state or territory; any notary public; any clerk of a court of record; any justice of the peace, his official character being certified under seal of some court of record in his county.

MISSOURI.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute law in this state. Revised Statutes of Missouri, 1899, § 3412.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment, proof, filing or recording. It is not definitely determined as to whether same must be recorded or filed in order to make it valid and to hold title as against third parties, but one or the other method is necessary. In order to entitle the contract to be either recorded or filed it must be acknowledged by the vendee in person, or be proven by one subscribing witness. All acknowledgments must be made before an official with seal. Revised Statutes of Missouri, 1899, § 3412.

Recording or Filing.

The law governing chattel mortgages provides that they may be recorded when acknowledged by the parties or proven

by one subscribing witness, the original being sent to the recorder of deeds in the county where the mortgagor resides, or, if in the city of St. Louis, to the city recorder of deeds. If the mortgagor is a non-resident, the contract must be recorded in the county where the property is situated.

The law of chattel mortgages further provides that the original instrument or a certified copy thereof may be filed in the same offices as above provided without being acknowledged by the vendee or proven by a subscribing witness, but it is necessary that the instrument be signed by the vendee and by one subscribing witness.

There is a controversy as to whether conditional contracts of sale come within this latter provision as to filing, for the law governing them states that they shall be recorded as chattel mortgages are and does not provide specially for filing.

Many recording officers of the state will accept such a contract to be filed without being acknowledged by the vendee, if same is duly signed and proven by a subscribing witness. Revised Statutes of Missouri, 1899, §§ 914-920, 3404, 3412; *Harrison v. South Carthage Mining Co.*, 79 S. W. 1160; *Fairbanks & Morse Co. v. Baskett*, 71 S. W. 1113.

Recording Fee.

Where a contract is recorded, the officer is entitled to receive eight cents for each one hundred words. Where the contract or a certified copy is filed, the fee is ten cents. Revised Statutes of Missouri, 1899, § 3256.

Re-recording or Renewal.

The contract is valid for the term of five years. There is no provision for re-recording or renewal.

Discharge.

The law requires that such an instrument shall be discharged after payment, but no penalty is provided for failure to make such discharge. It is always advisable, however, upon request of the vendee, or any other proper party to discharge such a contract from record after payment in full has been received.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon personal property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property held under conditional contract of sale. If the amount be \$50.00 or over, the disposal of such property is a felony punishable by imprisonment in the penitentiary for not more than five years or in the county jail for not more than six months, or by a fine of not less than \$100.00, or both such fine and imprisonment. If the value of the property is less than \$50.00, the offense is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$100.00, or both by such fine and imprisonment. Revised Statutes of Missouri, 1899, § 1933.

Money Judgment or Replevin.

No decision has been found in this state giving the vendor a right to secure a money judgment and if unable to collect same, to afterward replevin the property.

Fixtures.

There seems to have been no decision by the courts of this state fixing the rights of a vendor under conditional con-

tract of sale where the property in question has become a fixture upon a building. It seems safe to say that where the contract in question was duly recorded or filed before delivery of property to vendee, either the property itself could be recovered upon non-payment or a lien could be enforced against the building in a court of equity for the amount unpaid under the contract.

When Vendor or Vendee Loses.

A soda fountain was contracted for under agreement that all title should be retained in vendor until payment was made in full. The property was destroyed while there were still five notes unpaid and vendor sued for the balance.

HELD: The contract was executory but the vendee having possession must pay the balance. *Tufts v. Wynn & One*, 45 Mo. App. 42.

General Remarks.

Where property sold under conditional contract of sale is taken possession of for non-payment, the vendor shall tender to the vendee the amount received under the contract after deducting a reasonable sum for use of the property which cannot exceed twenty-five per cent. of the amount received. In addition thereto, if the property is broken or damaged, a reasonable allowance shall be made to the vendor for such injury. Revised Statutes of Missouri, 1899, § 3413.

Street railroad equipment may be delivered under conditional contract of sale but in order to be valid and to hold title as to third parties, the contract must be in writing signed by all parties concerned and duly acknowledged by the vendee, lessee or bailee as the case may be and must be recorded in the office of the Secretary of State. Each engine or car so delivered shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word

"Vendor," "Lessor" or "Bailor" as the case may be. When such contract shall have been paid, a declaration to that effect shall be recorded and notation of discharge shall be made on the record and the names on the engines or cars shall be removed.

The fees to the Secretary of State are \$25.00 for recording an instrument of one thousand words or less and \$1.00 for each one hundred words in excess of one thousand and he shall receive a fee of \$10.00 in addition for noting a discharge upon the record. Revised Statutes of Missouri, §§ 1182-3.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF MISSOURI, }
COUNTY OF ST. FRANCOIS. } ss.:

In person before me, the undersigned, comes John Stigler, to me personally known¹ and being by me duly sworn, says he signed the foregoing instrument as a subscribing witness thereto, and the person executing said instrument did sign and deliver same as his act and deed.

JOHN STIGLER.

Subscribed and sworn to before me
this 11th day of June, 1907.

MARCUS SHERWOOD,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

¹ If witness is not known to officer before whom acknowledgment is taken, his identity may be established by the testimony of two competent parties and the phrase "personally known" would then be replaced by the clause "proven by oath of Richard Fisher of Omaha, Nebraska, and Henry Smith of Farmington, Missouri, to be John Stigler."

ACKNOWLEDGMENT BY VENDEE.

STATE OF MISSOURI, }
COUNTY OF STODDARD. } ss.:

On this 3rd day of June, 1907, before me personally appeared James F. McCall, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

HENRY H. GREENOUGH,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. Any judge, justice or clerk of a court having a seal; any notary public; any justice of the peace in his county.

Without the State but Within the United States. Any court of the United States or any state or territorial court having a seal; a clerk of any such court; a commissioner of the state of Missouri; a notary public.

MONTANA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b, § 1.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against purchasers or mortgagees it must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to entitle it to be so filed. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b, § 1.

Recording or Filing.

No provision is made in this state for recording contracts of conditional sale. They may, however, be filed and in order to hold title as against purchasers or mortgagees,

the original contract duly signed by the vendee, or a copy thereof certified by the county clerk and recorder, should be filed with the county clerk and recorder of the county wherein the property is located. There is no express time within which this must be done, but in order to avoid all question the filing should be effected before the vendee has possession of the property. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b, § 1.

Filing Fee.

The fee for filing such an instrument is fifty cents. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b, § 2.

Re-recording or Renewal.

Such a contract is valid for the term of eight years. There is no provision for refiling or renewal.

Discharge.

Conditional contracts of sale must be discharged by the vendor when the purchase price is paid in full, and a failure on his part to cause such discharge and satisfaction within thirty days after payment in full is received, shall render the vendor liable for all actual damages sustained by the vendee through such failure. Laws of 1899, Senate Bill 91, Art. V, § 23, p. 124b, § 3.

Landlord's Lien.

There is no express provision of law giving a landlord a lien for rent upon personal property found upon his premises.

Criminal Liability of Vendee for Disposal of Property.

There is no express provision of law making it a crime to sell or dispose of property held under conditional contract

of sale. It is a crime to destroy, conceal, sell or otherwise dispose of property covered by a chattel mortgage, punishable by a fine of not less than \$50.00 nor more than \$500.00, or by imprisonment in the county jail not less than thirty days and not more than six months, or by both such fine and imprisonment. (See pp. 13, 14.)

Where property covered by a chattel mortgage is sold to a third person without informing him of the lien, such purchaser may recover of the mortgagor twice the value of the property. Compiled Statutes of 1887, §§ 1553-4.

Money Judgment or Replevin.

The question as to whether or not a vendor under a conditional contract of sale can secure a money judgment and if unable to collect can thereafter replevin the property, has not been passed upon by the courts of this state.

Fixtures.

There seems to have been no judicial determination as to the effect produced by attaching to a building, property held under conditional contract of sale.

General Remarks.

It is the opinion of good attorneys in this state that contracts of conditional sale are valid whether filed or not, as against an attachment, but that as against a sale or a mortgage to a bona fide third party they are not valid unless filed as provided.

NEBRASKA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Cobbey's Annotated Statutes, 1903, § 5975.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to hold title as against third parties, it is necessary that the contract should be filed. It is not necessary that the instrument should be acknowledged by the vendee or the vendor, nor that it be signed or proven by a subscribing witness, but the law requires that to the copy sent for filing shall be attached an affidavit of the vendor, or lessor, or his agent or attorney, containing the names of the vendor or lessor and vendee or lessee, OR (so in the statute) a description of the property and its value and the full and true interest of the vendor or lessor therein. Cobbey's Annotated Statutes, 1903, § 5975.

Recording or Filing.

In order to retain the vendor's title as against third parties, the contract must be duly signed by the vendee, and a copy to which the affidavit described has been attached, must be filed in the office of the county clerk of the county wherein the vendee resides. There is no definite time provided within which such filing must be made, but in order to avoid all question the contract should be filed before the vendee secures possession. *Cobbey's Annotated Statutes*, 1903, § 5975; *Campbell Printing Co. v. Dyer*, 46 Neb. 830.

Recording Fee.

The fee for filing such a contract is twenty-five cents. *Cobbey's Annotated Statutes*, 1903, § 5976.

Re-recording or Renewal.

Such a contract must be renewed by filing within thirty days before the end of five years from date of original contract, and within thirty days before the end of each year thereafter a copy of the contract in question together with an affidavit of the same nature as that required when the original filing was made. *Cobbey's Annotated Statutes*, 1903, § 5975.

Discharge.

The courts have held there is no provision requiring discharge of such a contract, and that the penalty provided for failure to discharge a chattel mortgage after payment does not apply. It is always advisable, however, to furnish a discharge to the vendee or any other interested party upon application after payment in full. *Cobbey's Annotated Statutes* of 1903, § 5964; *McCormick Harvester Co. v. Mills*, 89 N. W. 621.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon personal property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to sell, secrete or encumber property held under conditional contract of sale, punishable where the value of such property is \$35.00 or more by imprisonment in the penitentiary for not less than one nor more than seven years, and where the value of such property is less than \$35.00 by restitution in double the amount of the value of such property and by fine not exceeding \$100.00, or imprisonment in the county jail not to exceed thirty days. Cobbey's Annotated Statutes, 1903, §§ 2187, 2193, 5977.

Money Judgment or Replevin.

The question as to whether or not a vendor under conditional contract of sale may secure a money judgment, and if unable to collect can thereafter replevin the property, has not been determined in this state.

Fixtures.

When property sold under conditional contract of sale has been fastened to a building in such a manner that it can be removed without material injury to the building or to itself, it may be removed by vendor if the contract price is not paid. Where the property has become attached to a building in such a manner as to make it a material part thereof or so that it cannot be removed without great injury to the building or to itself, a lien for the balance unpaid attaches to the building and must be enforced by an action in equity. *Arlington Mill Co. v. Yates*, 57 Neb. 286; *Edwards Lumber Co. v. Rank*, 57 Neb. 323.

Forms.**AFFIDAVIT WHERE VENDOR IS NOT
A CORPORATION.**

STATE OF NEBRASKA, }
COUNTY OF CUSTER. } ss.:

Charles F. Simmons, being duly sworn, says he is the vendor or lessor,¹ and Hermann Rossea of Omaha, Nebraska, the vendee or lessee of the safe described in copy of contract hereto attached, and the full and true interest of said vendor or lessor in said safe is that of owner.

CHARLES F. SIMMONS.

Subscribed and sworn to before me

this 25th day of June, 1907.

WARREN P. WOOD,

Notary Public, etc.

AFFIDAVIT WHERE VENDOR IS A CORPORATION.

STATE OF NEBRASKA, }
COUNTY OF GREELEY. } ss.:

G. Egbert Carroll, being duly sworn, says he is attorney² for the Cary Safe Company, a corporation; that said Cary Safe Company is the vendor or lessor, and Harry Jewell of Omaha, Nebraska, the vendee or lessee of the safe described in copy of contract hereto attached, and the full and true interest of said vendor or lessor in said safe is that of owner.

G. EGBERT CARROLL.

Subscribed and sworn to before me

this 20th day of June, 1907.

GEORGE B. CLARK,

Notary Public, etc.

¹ or, if such is the case, "the agent or attorney for the vendor or lessor".

² Affidavit may be made and signed by any duly authorized officer or agent of the corporation.

Officers Before Whom Acknowledgments May be Taken.

Within the State and within the jurisdiction of the officer acting. A judge or clerk of any court; a justice of the peace; a notary public.

Without the State but Within the United States. Any commissioner of deeds for the state of Nebraska or any other officer authorized to take acknowledgments; but if such acknowledgments are taken without the official seal of the officer acting, then (but not otherwise) the authority, regularity and signature of such officer must be certified by the clerk of the court of record or other certifying officer of the county, district or state.

NEVADA.

Legal Status of Conditional Contracts of Sale.

There is no special provision of law governing conditional contracts of sale, but they are recognized by the courts to the fullest extent. *Cardinal v. Edwards*, 5 Nev. 36.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision of law requiring such a contract to be either acknowledged by the vendee or vendor, or proven by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing such a contract. It is valid as to all parties without recording or filing for the term of six years. *Cardinal v. Edwards*, 5 Nev. 36.

Landlord's Lien.

There seems to be no express provision giving a landlord a lien for rent on property found on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of chattel mortgaged property, punishable by a fine not exceeding \$500.00, or imprisonment in the county jail not exceeding six months, or both. There is no provision of law making it a crime to sell or dispose of property held under conditional contract of sale. Compiled Laws, §§ 4806-7. (See pp. 13, 14.)

Money Judgment or Replevin.

There has been no court decision in this state determining whether or not a vendor may bring action for a money judgment on his contract and if unable to collect, thereafter replevin the property.

Fixtures.

The effect of fastening to a building property sold under conditional contract of sale has not been judicially determined.

NEW HAMPSHIRE.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Public Statutes, Ch. 140, § 23.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without filing or recording, and also as to all third parties where the property in question is household furniture. Any lien reserved on personal property except household furniture is, however, invalid as to subsequent purchasers or attachment creditors without notice, unless a written memorandum thereof is recorded to which must be attached the affidavit of all parties setting forth the nature of the transaction. (See Form of Affidavit, p. 196.) Public Statutes, Ch. 140, §§ 23, 24.

Recording or Filing.

In order to hold title as against third parties, excepting on household furniture, the original contract, duly executed

by the vendee and having attached an affidavit of all parties to the agreement, must be recorded within twenty days after date of the contract in the town clerk's office of the town where the vendee or purchaser resides, if within the state. If the vendee is not a resident of the state, then it must be recorded in the office where the vendor resides if within the state, or if both are non-residents, then in the like office in the town where the property is located. There is no provision for proof of such a contract by a subscribing witness and no subscribing witness is necessary. Such a contract is valid as to all subsequent creditors whenever recorded. If the vendor or vendee is a partnership, the affidavit to contract for such partnership may be made by any partner. Public Statutes, Ch. 140, §§ 7, 23-26.

A contract for the sale of household furniture is excepted from the provisions above stated. If such a contract is in writing it does not need to be recorded or filed, but is good as against all persons until paid in full.

Recording Fee.

A recording officer is entitled to receive as his fee seventeen cents for recording each page of two hundred and twenty-four words. Public Statutes, Ch. 287, § 26.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is no provision for discharge and no express penalty for failure to make such discharge. It is always advisable, however, upon request of the vendee or any other proper party, to discharge such a contract from record after payment in full has been received. Fee for discharge, twenty-five cents. Public Statutes, Ch. 287, § 26.

Criminal Liability of Vendee for Disposal of Property.

It is a crime punishable by fine not to exceed \$1,000.00 or imprisonment not to exceed one year, to remove, conceal or dispose of chattel mortgaged property or to aid in so doing, but there is no express provision covering like actions in regard to property held under conditional contract of sale. Public Statutes, Ch. 140, § 16. (See pp. 13, 14.)

Money Judgment or Replevin.

The question as to whether or no a vendor may secure a money judgment under his contract, and, if no collection is made, afterwards replevin the property, has not been passed upon by the courts of this state.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract of sale has not been judicially determined. The probability is, however, that where such a contract exists and the property is capable of removal, it can be taken possession of, and especially so if the contract is recorded before the property becomes a fixture.

In the case of an engine, boiler and smoke stack which were attached to a mill in the usual manner and upon which the vendor held an unrecorded chattel mortgage, it was held that as to a subsequent real estate mortgage covering the building this personal property had become part of the realty. *Tibbetts v. Horne*, 65 N. H. 242.

General Remarks.

A conditional contract of sale for railroad equipment must be acknowledged by the vendee and recorded with the Secretary of State. Public Statutes, Ch. 140, pp. 448-9.

Forms.**AFFIDAVIT BY PARTIES.**

We severally swear that the foregoing contract, or memorandum, is made for the purpose of witnessing the lien and the sum due thereon as specified in said memorandum, and for no other purpose whatever, and that said lien and sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum said to be due thereon is honestly due thereon, and owing from the purchaser to the vendor.

SAMUEL D. POND.

ERVIN STEVENS.

STATE OF NEW HAMPSHIRE, }
COUNTY OF ROCKINGHAM. } ss.:

On this 8th day of June, 1907, then personally appeared said Samuel D. Pond and Ervin Stevens and each took and subscribed the foregoing oath before me.

TAYLOR PEARSON,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within or Without the State but Within the United States. A justice, notary public or a commissioner.

NEW JERSEY.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Statutes of New Jersey, Vol. I, pp. 891-2, §§ 185-191.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but to hold title as against third parties, it is necessary that same should be recorded. In order that such a contract may be recorded the vendee must acknowledge it in person or it must be proven by one subscribing witness. Statutes of New Jersey, Vol. I, pp. 891-2, §§ 185-187.

Recording or Filing.

In order to hold title as against third parties the original contract, duly signed by the vendee, should be recorded. There is no provision for filing.

The law does not provide any definite time within which the contract must be recorded and same is declared to be valid as to creditors from the date of record, but in order to avoid all question as to attachment or judgment creditors this should be attended to before the vendee secures possession of the property.

Where the office of register of deeds exists in a county, the contract must be recorded in his office. The only counties in the state having a register of deeds are Essex, Hudson and Camden. In other counties the proper recording officer is the county clerk of the county where the vendee resides if within the state, or if he is a non-resident then in the county clerk's office of the county where the property shall be when the instrument is executed.

A subscribing witness can swear to the execution of such a contract so as to entitle same to be recorded, and the salesman who secures the order for the vendor may act as such subscribing witness provided he does not also execute the contract for and on behalf of the vendor. When it is difficult or not desirable to secure the acknowledgment of the vendee in person, the subscribing witness may make oath that he saw the contract duly signed and executed by the vendee, and the instrument is then ready for record. Statutes of New Jersey, Vol. I, pp. 891-2, §§ 185-187; also p. 853, §§ 4, 5, 7; Vol. III, p. 2733, § 1; p. 2734, § 9; General Electric Co. v. Transit Co., 57 N. J. Eq. 460, or 42 Atl. 101.

Recording Fee.

The recording officer shall receive ten cents for each one hundred words and three cents for indexing each name, or he may charge a minimum fee of seventy-five cents. Statutes of New Jersey, Vol. I, p. 890, § 183; Vol. II, p. 1451, §§ 7, 8.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is a law providing that a chattel mortgage must be discharged from record after payment, but no penalty is provided for failure to discharge. There seems to be no express provision requiring that a conditional contract of sale be discharged after payment. It is, however, always best upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received. Fee for discharge, fifty cents. Statutes of New Jersey, Vol. II, p. 2108, §§ 25, 30.

Landlord's Lien.

A landlord has a lien for rent in this state upon property found on his premises, but it has been held by the courts that such a lien does not attach to the property covered by conditional contract of sale until the landlord has settled any unpaid balance, and this is true whether the contract has been recorded or otherwise. Statutes of New Jersey, Vol. II, pp. 1915-16, §§ 4-6; *Reischmann et al v. Masker*, 55 Atl. 301.

Criminal Liability of Vendee for Disposal of Property.

To secrete, sell or remove from the county property covered by chattel mortgage is made a crime, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than six months, or both. There appears to be no express provision of like nature applying to property held under conditional contract of sale. Statutes of New Jersey, Vol. I, p. 1087, § 212. (See pp. 13, 14.)

Money Judgment or Replevin.

If a money judgment is secured on a conditional contract of sale but is not collected, the vendor's lien on the property is not lost and he may thereafter bring replevin action for pos-

session. *Campbell Printing Press Co. v. Rockaway Pub. Co.*, 29 Atl. 681.

Fixtures.

The courts of this state have gone further in their decisions establishing the rights of a conditional vendor where the property becomes a fixture, than has been done in any other state.

The rule has been laid down that where a vendor sees fit to retain title in his property until paid for, the fact that such property is thereafter attached to a building should not change his rights.

It is further declared that if the property in question can be removed without great injury to itself or to the building, it may be taken possession of, and where it cannot be so removed, that the vendor shall have a right of action in equity to enforce his lien against the building itself for the balance unpaid. *General Electric Co. v. Transit Co.*, 57 N. J. Eq. 460, or 42 Atl. 101; *Campbell v. Roddy*, 44 N. J. Eq. 244; *Palmateer v. Robinson*, 60 N. J. Law 433, or 38 Atl. 957.

When Vendor or Vendee Loses.

A soda fountain was delivered under conditional contract of sale by which title was retained in vendor until the fountain was paid for. The property was destroyed by fire while a balance remained unpaid and in a suit to recover the amount it was held that the vendor was entitled to payment. *American Soda Fountain Co. v. Vaughn*, 51 Atl. 54.

General Remarks.

It has been held by the highest court of the state that where a contract provides for the renting of property and does not agree to give a bill of sale, then such a contract is a lease and retains title in the vendor under all circumstances with-

out recording. *Singer Mfg. Co. v. De Wolff & Co.*, 56 Atl. 147.

A conditional contract of sale for railroad, or street railroad, rolling stock and equipment is not valid as against any subsequent judgment creditor or purchaser for value without notice, unless same be in writing, duly acknowledged and recorded in the office of the register of deeds of the county in which is located the principal office or place of business of vendee. If such railroad is operated in more than one county, the contract shall also be recorded with the Secretary of State. Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word "Owner," "Lessor," "Bailor" or "Assignee," as the case may be. Statutes of New Jersey, Vol. II, pp. 2706-7, §§ 297-99.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

I, a Master in Chancery in and for said State and County, do hereby certify that on the 28th day of May, 1907, in the County aforesaid, personally appeared Sidney Fuller with whom I am personally acquainted and whom I know to be the subscribing witness to the execution of the foregoing instrument, who, being duly sworn by me, did dispose and say that he subscribed his name to the said instrument as the subscribing witness on the day that same bears date,¹ and that Thomas H. Gardner did sign and deliver the instrument as his voluntary act and deed.

¹ If the acknowledgment is for a corporation, substitute after the word "date" the words "and being well acquainted with the common seal of the Henderson Mercantile Company, knows that same was and is hereunto set and that said instrument was so sealed and was delivered as the voluntary act and deed of said corporation".

In Witness I have hereunto affixed my hand and seal this
28th day of May, 1907.

[SEAL.] MORRIS B. ERNSHAW,
Master in Chancery of New Jersey.

ACKNOWLEDGMENT BY VENDEE.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.:

On this 5th day of June, 1907, personally appeared before me, Victor Jackson, a Master in Chancery for the said State and County, Charles C. Curtis, who I am satisfied is the vendee mentioned in the foregoing instrument, and I having first made known to him the contents therein, he acknowledged that he executed the same for the uses and purposes therein mentioned.

[SEAL.] VICTOR JACKSON,
Master in Chancery of New Jersey.

Officers Before Whom Acknowledgments May be Taken.

Within the State. A chancellor or a justice of the supreme court; any attorney-at-law admitted to practice by the supreme court; a judge or clerk of the court of common pleas in any county; a master in chancery; a commissioner of deeds; a surrogate, deputy surrogate, or register of deeds; a county clerk or deputy county clerk. In New Jersey a notary public has no authority to take an acknowledgment.

Without the State but Within the United States. Any judge of the United States supreme, circuit or district courts; the chancellor of the state or territory where taken; the judge of the supreme or superior court of the state where taken; the mayor or chief magistrate of cities under the seal of such cities; a master of chancery or a commissioner of deeds of New Jersey; a judge of any court of common pleas or of

record, the official character and the authority of such judge and the authenticity of his signature to be certified under the great seal of the state or territory or under the seal of the court of the county in which the acknowledgment is taken; any officer authorized to take acknowledgments of deeds, provided it shall be accompanied by a proper certificate of the acting official's signature and authority. The form of such a certificate is as follows:

CERTIFICATE OF COUNTY CLERK.

STATE OF NEW YORK, }
COUNTY OF KINGS. } ss.:

I, Frederick Lawler, Clerk of the County of Kings and Clerk of the Supreme Court in and for said County,

DO HEREBY CERTIFY, That the said court is a Court of Record; that Harris B. McLain whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Notary Public in and for said Kings County duly commissioned and sworn, and qualified to act as such; that as such he was at the time of taking such acknowledgment duly authorized by the laws of the State of New York to take the acknowledgment and proofs of deeds or conveyances for lands, tenements or hereditaments in said State of New York; that I am well acquainted with the handwriting of said Harris B. McLain and verily believe his signature to the same is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Brooklyn in said County of Kings, this 4th day of June, A. D. 1907.

FREDERICK LAWLER,
Clerk, etc.

{ SEAL OF }
{ COURT. }

NEW MEXICO.

Legal Status of Conditional Contracts of Sale.

There is no express statutory provision as to conditional contracts of sale but they are held valid by court decisions. *Maxwell v. Tufts*, 8 N. Mex. 396.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision for acknowledgment of such an instrument by the vendee or vendor, nor for signing or proof by a subscribing witness.

Recording or Filing.

Such a contract is valid as to all parties for the term of six years. There is no provision for recording or filing.

Landlord's Lien.

A landlord has a lien on the property of his tenant for rent but as property sold under conditional contract of sale is not the property of the tenant, no lien for rent would attach thereto.

Criminal Liability of Vendee for Disposal of Property.

There is no provision making it a crime to sell or dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

There has been no court decision in this state determining whether or not a vendor who brings action for a money judgment under his contract and is unable to collect, can thereafter replevin the property.

Fixtures.

The effect of attaching to a building property held under conditional contract of sale has not been determined by the courts of this state.

General Remarks.

The leading decision on the law of conditional sales is *Maxwell v. Tufts*, 8 N. Mex. 396. This case arose under a contract for the sale of a soda fountain and fixtures, the contract not being filed or recorded in the recorder's office. A bank attached the chattels in vendee's possession including the soda fountain, and the vendor under conditional contract brought a replevin action on the ground that such contract was not required by law to be either recorded or filed. The court in deciding in favor of the vendor stated that a conditional contract is not a chattel mortgage, for a vendor under conditional contract never parts with title and therefore cannot accept a lien on property to which he holds full title, and that such an instrument need not be filed or recorded in order to be valid as to all third parties. It was held that the vendor could follow his property wherever it might be if the price had not been paid. *Maxwell v. Tufts*, 8 N. Mex. 396.

NEW YORK.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state and they are divided into two classes: those covering property attached or to be attached to a building, and those covering property which is not attached or to be attached to a building. Cumming & Gilbert's Gen. Laws, Vol. II, pp. 2189-91, §§ 116-118; Vol. IV, pp. 963-6, §§ 112-114.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against subsequent purchasers, pledgees and mortgagees in good faith, a copy of same must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. Cumming & Gilbert's Gen. Laws, Vol. IV, pp. 963-5, §§ 112-13.

Recording or Filing.

In order to hold title as against third parties a contract of conditional sale must be filed as set forth under the headings which follow. As to the exact time when it must be filed the statutes are silent but the point has been discussed in many decided cases and the rule may be said to exist that the vendor shall use all due diligence in placing such agreement on file immediately after it has become a contract and binding upon both parties.

Where a formal contract is entered into and duly signed by all parties, a copy of the instrument should be made the same day, if possible, and mailed to the proper filing officer.

Where an order is secured from the vendee which must be submitted to the vendor for acceptance, there is no contract existing until such acceptance is made, but when that action has been taken by the vendor a copy of the completed contract should be sent for filing with all due diligence. If a delay of more than a day or two intervenes, a satisfactory explanation would of necessity have to be made, and where a week or more elapses from the time when the order actually became binding on the parties without its having been filed, the vendor is in danger of being superseded. *Stephens v. Perrine*, 143 N. Y. 476; *Karst v. Gane*, 136 N. Y. 316; *Vreelend v. Pratt*, 42 St. Rep. 582; *Bullard v. Kenyon*, 53 St. Rep. 731.

Recording or Filing where Property is Attached or to be Attached to a Building.

Where property sold under conditional contract of sale is attached or to be attached to a building the contract, in order to retain title in the vendor as to subsequent bona fide purchasers or encumbrancers of the premises, must contain a brief description of the premises sufficient for identification and if in a city or village the location of said premises by street and number, if known; and where the block system of record-

ing and indexing is in use (to wit: Greater New York) the section and block within which the premises are located.

Such contracts, in order to be valid as to the third persons named above, must be filed on or before the date of delivery of such property at such building, by filing a copy of the contract with the county clerk of the county in which the premises are located whereon the building stands, except in the Borough of Brooklyn where it must be filed in the office of the Register of King's County, and in the Boroughs of Manhattan and Bronx where it must be filed in the office of the Register of the County of New York. Cummings & Gilbert's Gen. Laws, Vol. IV, pp. 963-6, §§ 112-114.

Refiling of Contracts where Property is Attached or to be Attached to a Building.

All contracts covering property attached or to be attached to a building must be renewed within thirty days immediately preceding the end of each year from the date of previous filing in order to keep them valid as to subsequent bona fide purchasers or encumbrancers of the premises.

Such renewal may be effected by filing in the office where the contract was first filed, (1) a statement containing a description of such contract, the names of the parties, the time when and the place where filed, and the interest of the vendor in the property or of any person who has succeeded to his interest, or (2) a copy of the contract and its endorsements, together with a statement attached thereto or endorsed thereon showing the interest of the vendor or of any person who has succeeded to his interest. Cumming & Gilbert's Gen. Laws, Vol. IV, pp. 965-6, §§ 113-114.

Recording or Filing where Property is not Attached or to be Attached to a Building.

Where property sold under conditional contract of sale is not attached or to be attached to a building, the contract, in

order to retain title in the vendor as to subsequent purchasers, pledgees or mortgagees in good faith, must be properly signed by the vendee and a true copy thereof be filed at the time the contract is executed, with the clerk of the town or city where the vendee resides, if a resident of the state, and if he is not such a resident, then with the clerk of the town or city where such property is located :

EXCEPT :

(1) Where said town or city, outside of Greater New York, contains the office of the county clerk, the contract must be filed in his office.

(2) In Greater New York filing is made :

In the Borough of Brooklyn, in the office of the Register of the County of Kings.

In the Borough of Queens, in the office of the Clerk of Queens County.

In the Borough of Richmond, in the office of the Clerk of Richmond County.

In the Borough of Manhattan and Bronx, in the office of the Register of the City and County of New York. Cummings & Gilbert's Gen. Laws, Vol. IV, pp. 965-6, §§ 113-114.

If property is located in Greater New York when contracted for, and vendee resides elsewhere within the state, it seems necessary to file in the ordinary way *and also* as above.

Refiling of Contracts where Property is not Attached or to be Attached to a Building.

Such contracts must be refiled within thirty days immediately preceding the end of each year from the date of the previous filing in order to preserve their validity as against subsequent purchasers, pledgees or mortgagees in good faith.

Such refileing may be effected by filing in the proper clerk's office (1) a statement containing a description of such contract, the names of the parties, the time when and the place where filed, and the interest of the vendor or his successor, or (2) a copy of such conditional contract with its endorse-

ments together with a statement attached thereto or endorsed thereon, showing the interest of the vendor or his successor.

Such refiling must be made in the proper clerk's office as heretofore described of the town or city, or, excepting in Greater New York, in the county clerk's office, if such office is within such town or city, where the vendee resides if he is then a resident of the town or city where the last prior filing was made. If he is not there resident but is still a resident of the state, such filing shall be made in the proper clerk's office in the town or city, or, excepting in Greater New York, in the county clerk's office, if within such town or city, where the vendee then resides. If he is not a resident of the state, then such filing shall be made in the office of the proper clerk of the town or city, or, excepting in Greater New York, in the county clerk's office, if within such town or city, where the property was located when the instrument was executed.

Where the property was located in the City of Greater New York when the instrument was executed, and was not attached or to be attached to a building, the renewal must also be made by filing in the same office where the original contract or copy thereof was filed at the time of the execution of same, a copy of such conditional contract with its endorsements, together with a statement attached thereto or endorsed thereon showing the interest of the vendor therein or of any person who has succeeded to his interest. Cumming & Gilbert's Gen. Laws, Vol. IV, pp. 962-3, § 95; pp. 965-6, § 114.

Filing Fee.

The fee for filing such contract and making entry thereof is twelve cents. For refiling such contract and making entry thereof the fee is also twelve cents.

Excepting in New York City, if the person filing or refiling such a contract requires it, a receipt in writing must be issued to him by the filing officer, containing the names of the parties to the instrument filed, its date, amount, and the date and time of filing, and for this service the filing officer

is entitled to a fee of six cents. Cumming & Gilbert's Gen. Laws, Vol. IV, pp. 962-3, § 95; pp. 965-6, § 114.

Discharge.

Upon payment or satisfaction of a conditional contract of sale, whether for property attached or to be attached to a building, or otherwise, the vendor, his assignee or legal representative must, upon request of the vendee or any person interested, sign and acknowledge a certificate setting forth the fact of such payment, and where such certificate is filed with the proper recording officer said officer must mark the contract "Discharged." The fee for filing such certificate is six cents. Cumming & Gilbert's Gen. Laws, Vol. IV, pp. 962-3, § 95; pp. 965-6, § 114.

Landlord's Lien.

There is no provision of law in this state giving a landlord a lien for rent upon personal property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to sell, assign, exchange, secrete or otherwise dispose of property held under conditional contract of sale, punishable upon conviction by imprisonment in the county jail for not more than one year or by a fine of not more than \$500.00, or both. Penal Code, §§ 15, 571.

Money Judgment or Replevin.

Where property is sold under conditional contract of sale and not paid for, the vendor may bring action for a money judgment and pursue all legal remedies to collect same. If unable to do so, he may afterwards replevin the property but must then discharge the money judgment. *Brewer v. Ford*, 59 Hun 17, Aff'd 126 N. Y. 643; *Gormully & Jeffery Mfg. Co. v. Catharine*, 55 N. Y. Sup. 475; *Nat'l Cash Register Co. v. Coleman*, 85 Hun 125; *American Box Machine Co. v. Zent-*

graf, 45 App. Div. 522. See also *Orcutt v. Rickenbrodt*, 42 App. Div. 238; *Equitable General Providing Co. v. Potter*, 22 Misc. 124; *Hasbrouck v. Lounsbury*, 26 N. Y. 598; *Nat'l Cash Register Co. v. Ferguson*, 25 Misc. 363; *Manning & One v. Keenan*, 73 N. Y. 45.

Fixtures.

The method of retaining a lien upon personal property which is to become a fixture upon real estate is provided for by law. *Cumming & Gilbert's Gen. Laws*, Vol. IV, pp. 963-6, §§ 112-114. (See *supra* "Recording or Filing Where Property is Attached or to be Attached to a Building.")

When Vendor or Vendee Loses.

The question as to where the loss falls when property held by vendee under conditional contract of sale is destroyed before full payment therefor, is not definitely settled, but it would seem from the existing decisions that the common law rule that the loss follows the title, which is here in the vendor, would be upheld. *Wolf v. Di Lorenzo et al*, 21 Misc. 521, or 47 N. Y. Sup. 719; *Ainsworth v. Rhines*, 34 Misc. 372.

It is undoubtedly settled that a vendee under such circumstances cannot recover the amount he has paid in. *Humeston v. Cherry*, 23 Hun 141.

General Remarks.

When default is made in payment under a conditional contract of sale and the property is taken possession of, it must be held thirty days by the vendor subject to redemption by the vendee on payment of the amount due with expenses incurred by the vendor in taking possession of and holding the property. After the expiration of this period the property must be sold at public auction, provided that at least fifteen days' written notice of said sale has been given the vendee

in person if he is within the county where the sale is to be held, or has been mailed to his last known residence if he is not, or cannot be found therein. This notice may be given while the property is being held. If the property brings more at this public sale than the amount due on the contract together with the expenses of storage and sale, the balance must be held by the vendor subject to demand of the vendee, and a notice of the amount so held must be served on the vendee either personally or by mail. If not claimed, the amount due vendee must be held thirty days from the date of sale and then be deposited with the treasurer or the chamberlain of the city or village, or the supervisor of the town where the sale was held, together with a copy of the notice served on the vendee and a verified statement of the amount unpaid under the contract. Where property is returned or taken possession of by mutual agreement on failure of the vendee to perform, it is well to secure a contract of mutual release between the vendor and vendee, by which the vendor discharges the vendee from liability for further payment under the contract, and the vendee waives his right to have the property sold at public auction. Cumming & Gilbert's Gen. Laws, Vol. II, pp. 2189-91, §§ 116-118.

Railroad Equipment.

The conditional sale of railroad equipment is governed by special rules differing from those governing the sale of ordinary personal property. The contract must be in writing acknowledged by the vendee in person and must be recorded in the office of the county clerk or register of the county wherein is located the principal place of business of the vendee, and each engine, car, etc., must have plainly marked on both sides the name of the vendor, lessor or bailor, followed by the word "Vendor," "Lessor" or "Bailor" as the case may be. Cumming & Gilbert's Gen. Laws, Vol. II, p. 2187, § 111.

Forms.

The following form for renewal may be used when the property is not attached or to be attached to a building and is located in Greater New York at the time the contract is executed.

STATEMENT FOR RENEWAL.

The undersigned makes the following statement for the purpose of renewing a certain conditional contract of sale.

Such contract was made between Edward S. Davis of New York City, vendor, and Francis R. Littlejohn of Newburgh, New York, vendee, dated the 16th day of April, 1907, and provides for the sale of a Steinway Upright Piano in Mahogany Case, numbered 57,334, to be paid for in instalments, all title to be retained in vendor until full payment made, and said contract was filed in the office of the County Clerk of Orange County, on April 16, 1907. The interest of said Edward S. Davis in said property is an unpaid balance of \$150.

EDWARD S. DAVIS.

New York City, April 15, 1907.

The following form of renewal statement may be used for any property, whether at the time the contract is executed it is situated in Greater New York or elsewhere.

STATEMENT FOR RENEWAL.

The undersigned makes the following statement for the purpose of renewing a certain conditional contract of sale. A copy of said contract with its endorsements is attached hereto and made a part hereof and the interest of Hermann Laughlin, assignee of Henry H. Baumgartner, in the property mentioned therein is an unpaid balance of \$90.

HERMANN LAUGHLIN.

New York City, April 15, 1907.

NEW YORK.

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NORTH CAROLINA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute law in this state. Revisal of 1905, § 983.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Revisal of 1905, § 983.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be registered. To entitle the contract to be registered it is necessary either that it be acknowledged by the vendee in person or that it be proven by one subscribing witness. Revisal of 1905, §§ 989, 1040.

Recording or Filing.

In order to hold title as against third parties the original contract, duly signed by the vendee, must as already stated be registered. This is in effect filing the instrument and indexing same to the names of the parties thereto. There is no definite time within which the contract must be registered

but it should, if possible, be before the vendee secures possession of the property. The contract is entitled to be registered if it is duly acknowledged by vendee, or if it has been proven by one subscribing witness. In either case, the instrument must be "probated" as explained in the paragraph which follows.

A contract of conditional sale should always be signed by one subscribing witness, who may be the salesman who takes the order, provided he does not also execute the contract on behalf of the vendor. Where this has been done and it is desired to register the contract, same may be sent to the subscribing witness and sworn to by him. The instrument so proven is then sent to the clerk of the superior court of the county in which the vendee resides, if within the state, but if such vendee be a non-resident, then to the same officer of the county where the property is situated. It is the duty of this officer to examine the contract and if it has been properly executed and proven, to attach his certificate to that effect, which is called "probating" the instrument. He will then upon request, if the proper fees are remitted to him, turn the contract with the proof and probate attached, over to the register of deeds in his county for registration. Revisal of 1905, §§ 983, 989, 996, 997, 1040, 2655; Laws of 1891, Ch. 240; *Barrington v. Skinner*, 117 N. C. 47, or 23 S. E. 90.

Recording Fee.

The law provides that such contract shall be probated and registered for the same fees as a deed of trust or chattel mortgage. The fees are therefore as follows: Probate fee, ten cents; registration fee, twenty cents.

Certain probating officers attempt to collect twenty-five cents for probating the instrument and certain registers of deeds attempt to collect fifty cents for registration. There seems to be no provision of law authorizing such a charge. Revisal of 1905, §§ 983, 2773, 2776.

Re-recording or Renewal.

The contract is valid for the term of three years. There is no provision for re-recording or renewal.

Discharge.

There is a provision in the laws of this state for discharge of conditional contracts of sale from record after payment, but no penalty is provided for failure to make such a discharge. It is, however, always advisable upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received. Revisal of 1905, § 1046.

Landlord's Lien.

A landlord has no lien for rent on property held in his tenant's possession under conditional contract of sale. His only lien is upon crops grown on his land. Revisal of 1905, § 1993.

Criminal Liability of Vendee for Disposal of Property.

There appears to be no provision of law making it a crime to dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

An action may be brought for a money judgment on a conditional contract of sale and if the vendor is unable to collect on his judgment he may afterwards replevin the property. *Tufts v. Griffin*, 107 N. C. 47.

Fixtures.

Where property held under a conditional contract of sale is attached to a building in such a manner that it may be re-

moved without material damage to the building or to itself, the vendor is entitled to possession. If, however, it cannot be removed without great damage to the building or to itself he can undoubtedly enforce a lien against the building for the balance unpaid, and this is especially true where the contract has been registered before the property became a fixture. *Belvin v. Raleigh Paper Co.*, 123 N. C. 138, or 31 S. E. 655.

When Vendor or Vendee Loses.

The vendor under conditional contract of sale sued to recover from vendee the balance unpaid, after the property involved had been destroyed. He was allowed a judgment for the amount. *Tufts v. Griffin*, 107 N. C. 47, or 22 Am. St. R. 863.

General Remarks.

Any delivery of railroad equipment under conditional contract of sale, lease or bailment shall be invalid as to subsequent bona fide purchasers unless the same be in writing duly acknowledged and registered in the office of the register of deeds in each county in which said vendee, lessee or bailee does business; each locomotive or car so sold, leased or loaned to have the name of the vendor, lessor or bailor or the assignee of such vendor, lessor or bailor plainly marked on both sides thereof, followed by the word "Owner," "Lessor," "Bailor" or "Assignee," as the case may be. Revisal of 1905, § 984.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF NORTH CAROLINA, }
COUNTY OF MECKLENBERG. } ss.:

The execution of the foregoing contract was this day proven before me by the oath and examination of John Seward Davis, the subscribing witness thereto.

JOHN SEWARD DAVIS.

Witness my hand and notarial seal
this 27th day of April, 1907.

HARVEY E. ANDREWS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

The foregoing certificate of Harvey E. Andrews, Notary Public, is adjudged to be sufficient. Let the instrument together with the certificate be registered.

HOWARD McCOMB,
Clerk of Superior Court
for Mecklenberg County.

This 27th day of April, 1907.

ACKNOWLEDGMENT BY VENDEE.

STATE OF NORTH CAROLINA, }
COUNTY OF MECKLENBERG. } ss.:

I, Henry Adams, a Notary Public in and for said State and County, do hereby certify that Willis P. Landreth personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 6th day of June,
A. D. 1907.

HENRY ADAMS,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

Officers Before Whom Acknowledgments May be Taken.

Within the State. Judges of supreme or superior courts; clerks of superior or inferior courts; notaries public; a justice of the peace within his county.

Without the State but Within the United States. Judges and clerks of courts of record; notaries public; mayors of cities having a seal; justices of the peace, but when taken before a justice of the peace, a certificate of authority is required from the clerk of the court of record of the county in which such justice resides.

NORTH DAKOTA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Civil Code, §§ 6181-2.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Civil Code, § 6181; *Thompson v. Armstrong*, 11 N. D. 198, or 91 N. W. 39.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties, the contract must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor before filing but it seems essential that the original contract should be signed by two subscribing witnesses. Civil Code, §§ 6181-2, 6187.

Recording or Filing.

In order to hold title as against third parties the contract must be duly signed by the vendee and an authenticated copy of the instrument be filed with the register of deeds in

the county where the property or any part thereof is situated. No exact time is specified within which such filing must be made, but as a measure of prudence the contract should be filed immediately after its acceptance and before the vendee has possession of the goods. There is no provision in this state for recording conditional contracts of sale.

The law governing chattel mortgages provides expressly that they cannot be filed unless signed by two subscribing witnesses. The law as to conditional contracts of sale states that such contracts shall not be valid as to third parties unless in writing and indexed the same as a chattel mortgage, but does not specifically provide for the signature of any subscribing witness. For this reason many recording officers will accept and file a copy of such an instrument with but one witness's signature attached, and some will file without any witness whatsoever. There has been no court decisions as to what are the proper requirements and the question is still an open one. It would seem, however, from a fair and reasonable construction of the law that a conditional contract of sale in order to be filed must be executed in the same manner as a chattel mortgage, and this would mean that it must be signed by the vendee and by two subscribing witnesses. One of these may always be the agent of the vendor provided he does not also execute the contract for and on behalf of the vendor.

It seems very probable that a conditional contract of sale if not witnessed will have no effect as to third parties even though filed. Civil Code, §§ 6181-2, 6187.

Recording Fee.

The fee for filing a conditional contract of sale is twenty-five cents. Civil Code, § 2597, Subdiv. 9.

Re-recording or Renewal.

The contract must be renewed within ninety days immediately preceding the end of three years from first filing. Such renewal is effected by filing copy of contract with the register of deeds in the county in which the contract was originally filed together with an affidavit, signed by the vendor, his agent or attorney, stating the amount of the existing debt. Renewals must be made in like manner every three years thereafter. Fee for refileing, twenty-five cents. Civil Code, §§ 2597, Subdiv. 9, 6186.

Discharge.

There is a provision for discharge of such a contract from record after payment, but no express penalty is provided for failure. It is always, however, advisable upon request of the vendee or any other proper party to discharge the contract from record after payment, as any person injured by such a failure could undoubtedly collect his actual damages. There is no fee for such discharge. Civil Code, §§ 2597, Subdiv. 9, 6188.

Landlord's Lien.

A landlord has no lien for rent upon property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to destroy, dispose of, conceal or injure property held under conditional contract of sale, punishable as a felony if the value of such property is more than \$100.00, and punishable as a misdemeanor if the value is \$100.00 or less. Penal Code, § 9442.

Money Judgment or Replevin.

The question as to whether a vendor has the right to sue for a money judgment and if same cannot be collected afterward take possession of the property, does not seem to have been passed upon by the courts.

Fixtures.

No determination has been made as to the rights of a vendor where property held under a conditional contract of sale has become attached to a building.

Forms.

**AFFIDAVIT FOR REFILING WHERE VENDOR IS
NOT A CORPORATION.**

STATE OF NORTH DAKOTA, }
COUNTY OF BURLEIGH. } ss.:

Dennis W. Dodd being duly sworn says he is the vendor ¹ named in the copy of contract hereto attached. That there is still unpaid under said contract the sum of \$132.00.

DENNIS W. DODD.

Subscribed and sworn to before me
this 22nd day of May, 1907.

J. OSGOOD JONES,
Notary Public, etc.

**AFFIDAVIT FOR REFILING WHERE VENDOR IS A
CORPORATION.**

STATE OF NORTH DAKOTA, }
COUNTY OF GRAND FORKS. } ss.:

George B. Gould being duly sworn says he is the Treasurer² of the Middlesex Manufacturing Company, the vendor

¹ Affidavit may be made by an agent or attorney for the vendor.

² Affidavit may be made by any authorized officer or agent of the corporation.

named in the copy of contract hereto attached, and that there is still unpaid under said contract the sum of \$290.00.

GEORGE B. GOULD.

Subscribed and sworn to before me
this 12th day of March, 1907.

HENRY M. DICKMAN,
Notary Public, etc.

Officers Before Whom Acknowledgments May be Taken.

Within the State and within the judicial district, county, subdivision or city for which the officer was elected or appointed. Any judge or clerk of a court of record; United States, circuit or district court commissioners; mayors of cities; registers of deeds; county auditors; justices of the peace, or before notaries public at any place within the State.

Without the State but Within the United States. A justice, judge or clerk of any court of record whether United States, state or territorial; commissioners of the state appointed by the Governor; or any other officers authorized to take acknowledgments by the laws of the state or territory in which the acknowledgment is taken.

OHIO.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Bates' Annotated Statutes, 4th Ed., §§ 4150, 4155, Subdiv. 2 (§ 2), as amended by Laws of 1906, Vol. 98, p. 114; *Caldwell v. Singer Sewing Machine Co.*, 7 C. C. 460, Aff'd, 35 Bull 379.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but to make it valid and to hold title as against third parties it must be filed or recorded. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness to entitle it to be filed or recorded.

Recording or Filing.

In order to hold title as against third parties the original contract, duly signed by the vendee, or a sworn copy thereof,

must be filed or recorded. The laws permit the contract to be either filed or recorded, but as no better protection is secured by recording, such contracts are usually filed.

The statute provides that the filing or recording must be made forthwith and in order to avoid all question the contract should be filed before the vendee secures possession of the property. The original or a sworn copy, to which, in either case, must be attached an affidavit of the vendor, his agent or attorney, stating the amount of the claim, must be filed with the recorder of the county where the person signing the instrument, if a resident of the state, resides at the time of the execution thereof, and if not such resident then with the county recorder of the county in which such property is situated at the time the contract is signed. Bates' Annotated Statutes, 4th Ed., §§ 4150-53, 4155, Subdiv. 2 (§ 2), as amended by Laws of 1906, Vol. 98, p. 114.

Recording Fee.

Fee for filing each instrument, six cents; for searching each paper, six cents; for making entries upon the filing of each paper, six cents for each party thereto. If twenty-five cents is sent it is usually accepted by the filing officer. If it is desired to have the contract recorded the fees are ten cents for each one hundred words.

The fee for filing any affidavit, credit or statement added to the instrument between the time of its record and refiling is twenty-five cents. Bates' Annotated Statutes, 4th Ed., § 4157.

Re-recording or Renewal.

Such a contract should be refiled within thirty days immediately preceding the end of one year from date of previous filing, by filing a true copy in the office where the prior filing

was made to which must be attached an affidavit of the vendor, his agent or attorney, as to the amount unpaid, together with a sworn statement exhibiting the interest of the vendor at the time such refiling is made.

Such contract must be refiled within the thirty days prescribed. It cannot be refiled before thirty days from the end of such year or after the year has expired and still hold valid as to third parties.

Fee for refiling, same as for original filing. Bates' Annotated Statutes, 4th Ed., §§ 4155, 4157; *Biteler v. Baldwin*, 42 O. S. 125; *Cooper v. Koppes*, 45 O. S. 625; *In re Brocamp*, 2 C. C. 372.

Discharge.

There is no provision for discharge of such an instrument after payment, and no express penalty for failure to discharge. It is always, however, advisable upon request of the vendee or any other proper party, to discharge such a contract from record after payment in full has been received.

Landlord's Lien.

There is no provision of law giving a landlord a lien upon property located on his premises. He will certainly have no lien for rent where the contract of conditional sale is properly filed before the property covered by same is moved upon his premises.

Criminal Liability of Vendee for Disposal of Property.

To sell, secrete or remove property held under conditional contract of sale from the county where originally located is a crime, punishable on conviction by a fine of not more than \$500.00 or imprisonment for not more than three months, or both. Bates' Annotated Statutes, § 6849a.

Money Judgment or Replevin.

Where the vendor has secured a money judgment on such a contract and has seized the goods under execution, his action is regarded as an election to treat the title as vested in the vendee and a chattel mortgage made to a third party before levy will then take precedence. *Albright v. Meredith*, 58 O. S. 194.

Fixtures.

When the payments on a conditional contract of sale fail and the property held under such contract has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession. If, however, the property has been so attached to the building as to become a material part thereof and incapable of being removed without great injury to the building or to itself, the property cannot be taken possession of and the vendor's remedy is by action in equity to have the amount unpaid charged as a lien against the building itself. *Case Mfg. Co. v. Garven*, 45 O. S. 289.

General Remarks.

Where the vendor takes possession of property under conditional contract of sale because of failure on the part of the vendee to perform his contract and the amount paid by the vendee exceeds twenty-five per cent. of the contract price, the vendor must tender back the money so paid after deducting therefrom a reasonable compensation for the use of the property. This compensation shall in no case exceed fifty per cent. of the total amount paid by vendee, unless the property has been broken or actually damaged, when a reasonable compensation for such breakage or damage may also be deducted.

If the property is taken possession of by the vendor without tendering the prescribed amount, he is guilty of a misdemeanor punishable by a fine of not more than \$100.00. Bates' Annotated Statutes, 4th Ed., § 4155, Subdiv. 3, § 4155, Subdiv. 4 (§ 3); *Caldwell v. Singer Sewing Machine Co.*, 7 C. C. 460.

The general rule stated in the preceding paragraphs does not apply to machinery, equipment and supplies for railroads or contractors, or for manufacturing brick, cement and tiling, or for quarrying and mining purposes, in the case of which no repayment is necessary.

Forms.

AFFIDAVIT FOR FIRST FILING WHERE VENDOR IS NOT A CORPORATION.

STATE OF OHIO, }
COUNTY OF CLERMONT. } ss.:

Robert B. Thompson, being duly sworn, says he is the vendor¹ named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract, there is unpaid the said vendor the sum of \$95.00.

ROBERT B. THOMPSON.

Subscribed and sworn to before me
this 10th day of June, 1907.

STEPHEN H. SPOTTS,
Notary Public, etc.

¹ or if such is the case, "agent for vendor" or "attorney for vendor".

AFFIDAVIT FOR FIRST FILING WHERE VENDOR IS A CORPORATION.

STATE OF OHIO, }
COUNTY OF BUTLER. } ss.:

Osborn D. Reilly, being duly sworn, says he is agent ¹ for the Cary Safe Company, a corporation, the vendor named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract there is unpaid the said vendor the sum of \$225.00.

OSBORN D. REILLY.

Subscribed and sworn to before me
this 12th day of June, 1907.

WALLACE R. MACKIE,
Notary Public, etc.

AFFIDAVIT FOR REFILING WHERE VENDOR IS NOT A CORPORATION.

STATE OF OHIO, }
COUNTY OF CLINTON. } ss.:

Walter P. Loudon, being duly sworn, says he is the vendor² named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract, there is unpaid said vendor the sum of \$190.00; that the interest of said vendor in such property is that of owner.

WALTER P. LOUDON.

Subscribed and sworn to before me
this 15th day of March, 1907.

CHARLES N. RAYMOND,
Notary Public, etc.

¹ Affidavit may be made by any authorized officer, attorney or agent of the corporation.

² Affidavit may be made by the agent or attorney of vendor.

AFFIDAVIT FOR REFILING WHERE VENDOR IS
A CORPORATION.

STATE OF OHIO, }
COUNTY OF WAYNE. } ss.:

George Ridgeway, being duly sworn, says he is Secretary¹ of the Cary Safe Company, a corporation, the vendor named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract there is unpaid the said vendor the sum of \$336.00; that the interest of said vendor in such property is that of owner.

GEORGE RIDGEWAY.

Subscribed and sworn to before me
this 18th day of June, 1907.

FRANK W. TUTTLE,
Notary Public, etc.

Officers Before Whom Acknowledgments May be Taken.

Within the State. The judge or clerk of any court of record; any probate or police judge; county auditors; county surveyors; notaries public; justices of the peace.

Without the State but Within the United States. Commissioners appointed by the Governor. Also any acknowledgment in conformity with the laws of the state where taken, is valid in Ohio.

¹ Any authorized officer, attorney or agent of corporation may make this affidavit.

OKLAHOMA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law. Wilson's Revised & Annotated Statutes, § 4179.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor. Wilson's Rev. & Ann. Stat., § 4179.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties the instrument must be filed. It is not necessary that the contract be acknowledged by the vendee or vendor in order to be filed, but it seems to be essential that the original contract should be signed by two subscribing witnesses. Wilson's Rev. & Ann. Stat., §§ 3579, 3583, 4179; National Cash Register Co. v. Paulson, 83 Pac. 793.

Recording or Filing.

There is no provision in Oklahoma for recording conditional contracts of sale. Filing is provided for and in order to hold title as against third persons the original contract,

duly signed by the vendee, or a true copy of the original contract, must be filed with the register of deeds for the county where the property or any part thereof is situated. Where such property is situated in a portion of the territory attached to an organized county for judicial purposes the instrument must be filed in the office of the register of deeds for such county. No exact time is specified within which the contract must be filed, but in order to avoid all question this should be done immediately after the contract is accepted and before the vendee has possession of the goods.

The law does not specifically provide for the manner in which such a contract shall be acknowledged or proven in order to be filed, but does state that after being filed it shall be subject to the laws applicable to chattel mortgages. This condition has given rise to some confusion. Many recording officers will accept such contracts for filing when they are signed by one subscribing witness and others will file them where no witness signature at all is attached. It is very doubtful if such filing is any legal notice to third parties, as the law governing chattel mortgages expressly provides that in order to be filed the instrument must be witnessed by two persons.

It may be said, however, that in the opinion of reputable attorneys no witnesses are necessary where the contract is in fact one of conditional sale. While this is true, many instruments designated as conditional contracts of sale do in fact contain provisions which make them chattel mortgages, or at least something more than an ordinary conditional contract of sale, and the only safe rule as to witnesses and filing is that governing chattel mortgages. If the contract is signed by two witnesses and then filed it conforms to every requirement and is an undoubted protection to the vendor as against all third parties. There is no necessity for the witnesses to prove by their oaths the execution of either a chattel mortgage or a conditional contract of sale in order to entitle same

to be filed. In a case recently decided where the contract was one of conditional sale, it was held that no witnesses were necessary in order to entitle such a contract to be filed. *Wilson's Rev. & Ann. Stat.*, §§ 3579, 3583, 4179; *National Cash Register Co. v. Paulson*, 83 Pac. 793; *Shafer v. National Cash Register Co.*, 82 Pac. 646.

Recording Fee.

The fee for filing a conditional contract of sale is twenty-five cents. *Wilson's Rev. & Ann. Stat.*, § 3008.

Re-recording or Renewal.

The contract must be renewed within thirty days immediately preceding the end of three years from the previous filing and within thirty days immediately preceding the end of each three years thereafter, by filing in the office of the register of deeds of the county where the vendee then resides a copy of said contract together with an affidavit of the vendor, his agent or attorney, stating the amount unpaid.

The fee for refileing is twenty-five cents. *Wilson's Rev. & Ann. Stats.*, §§ 3008, 3582.

Discharge.

The laws provide for discharge of the contract from record after payment but no express penalty is imposed for failure so to do. It is, however, always advisable upon request of the vendee or any other proper party, to discharge the contract after payment in full has been received.

The discharge or cancellation of the instrument may be effected by presenting to the recording officer a receipt for the money or an acknowledgment of satisfaction signed by the vendor. Fee for discharging, twenty-five cents. *Wilson's Rev. & Ann. Stats.*, §§ 3008, 3584.

Landlord's Lien.

A landlord has no lien for rent on property located upon his premises.

Criminal Liability of Vendee for Disposal of Property.

To destroy, sell or conceal property covered by a chattel mortgage is a crime, punishable by imprisonment in the territorial prison for a period not exceeding three years or in the county jail not exceeding one year and by a fine not exceeding \$500.00. There seems to be no specific provision of law making it a crime to dispose of property held under conditional contract of sale, but it is probable that the provisions covering like actions as to chattel mortgages would apply as under the Oklahoma laws the two forms of contract are treated very much the same in every instance. Wilson's Rev. & Ann. Stats., § 2649.

Money Judgment or Replevin.

The question of a vendor's right to recover a money judgment and if same is unpaid to afterwards replevin the property, has not been passed upon by the courts.

Fixtures.

Milling machinery bought under conditional contract of sale was fastened to the floor of a building with screws and bolts. The contract under which delivery was made was not filed until after a real estate mortgage had been given and recorded. In an action to foreclose the real estate mortgage the mill including the machinery was sold and in making distribution of the proceeds, the court held that as the conditional sale contract was not filed until after the real estate mortgage and as the machinery was fastened to the building, the vendor was not entitled to payment and the real estate mortgage took all the proceeds. Great Western Mfg. Co. v. Bathgate, 79 Pac. 903.

OREGON.

Legal Status of Conditional Contracts of Sale.

There are no express statutory provisions for conditional contracts of sale in this state but they are recognized as valid by the courts and are held to be chattel mortgages. *Herring, Hall, Marvin Co. v. Smith*, 72 Pac. 704; *Singer Mfg. Co. v. Graham*, 8 Or. 17.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as to all persons without acknowledgment or proof, or filing or recording, except when railroad equipment is involved. (See "General Remarks.")

Recording or Filing.

Where the contract has been duly executed by the vendee, it is not necessary that the contract be either recorded or filed in order to hold title as against third parties. The instrument is valid for the term of six years.

Landlord's Lien.

A landlord has no lien for rent against property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

There is no special provision of law making it a crime to sell or dispose of property held under conditional contract of sale. The law does, however, make it a crime, punishable as larceny, to dispose of property covered by chattel mortgage. As conditional contracts of sale are held by the courts to be chattel mortgages, it is undoubtedly true that any act by which property held under such contracts is sold or disposed of would be punishable in a like manner. Codes & Statutes, §§ 1798, 1806.

Money Judgment or Replevin.

The question as to whether a vendor may bring action for a money judgment and if same is not collected afterwards replevin the property, has not been decided.

Fixtures.

Where the property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have held that the vendor is entitled to possession in case the contract payments are not made. If, however, the property has been so attached to the building as to become a material part thereof and so that it cannot be removed without great injury to the building or to itself, the vendor may bring an action in equity and enforce his lien against the building for the amount unpaid under the contract. *Henkle & One v. Dillon*, 15 Or. 610; *Landigan v. Mayer*, 32 Or. 245 or 67 Am. St. Rep. 521.

General Remarks.

Conditional contracts of sale for railroad equipment must be in writing, be acknowledged by the vendee and be recorded in the county clerk's office of the county where the vendee has its principal place of business within the state, and each car, engine, etc., shall have attached to the side thereof the name of the vendor, or lessor or owner. Codes & Statutes, § 5137.

PENNSYLVANIA.

Legal Status of Conditional Contracts of Sale.

Except for railroad equipment, the statutes of this state make no provision for contract sales under which title is retained in the vendor until the purchase price is paid in full. Act of July 5th, 1883.

How Executed.

As between the original parties a contract of conditional sale in writing signed by the vendee is enforceable. *Brunswick & Balke Co. v. Hoover et al*, 95 Pa. 508; *Forrest v. Nelson*, 108 Pa. 481.

Acknowledgment or Proof.

There is no provision of law by which such a contract may be acknowledged or proven, or filed or recorded, so as to make it valid as against third parties.

Recording or Filing.

There have been instances where such contracts were duly acknowledged by the vendee and the vendor and recorded with the same formality as a deed of real estate, but the courts have held that such formality has no force or effect as the laws of this state do not recognize the validity of such a contract where the rights of third parties are affected.

Landlord's Lien.

A landlord's lien for rent is prior to a vendor's rights under a conditional contract of sale, and also as against a

lease or bailment, except as to pianos or organs where the landlord has actual notice of the contract before the property is moved upon his premises. *Pepper & Lewis' Digest*, Vol. I, pp. 2635-45; *Myers v. Esery*, 134 Pa. 177; *Rohrer v. Cunningham et al*, 138 Pa. 162.

Criminal Liability of Vendee for Disposal of Property.

There is no provision making it a crime to dispose of property held under conditional contract of sale, but it is a crime to dispose of property held under a lease or bailment. *Krause v. Commonwealth*, 93 Pa. 418. (See pp. 13, 14.)

Money Judgment or Replevin.

Where action is brought against the vendee or lessee and a money judgment obtained for the purchase price of the property held under conditional contract of sale, or a lease or bailment, the vendor is deemed to have waived his original rights under the contract and cannot afterwards replevin the property. *Seanor & One v. McLaughlin*, 165 Pa. 150; *Scott v. Hough*, 151 Pa. 630.

Fixtures.

The rights of a vendor or lessor in property which has been affixed to real estate have not been definitely determined. It is undoubtedly true that where the instrument is a pure lease or bailment and the property has not been so attached to the building as to become a material part thereof, it may be removed upon failure of the contract payments, but where the property has actually become a fixture and its removal would greatly injure the building or the property itself, or both, the rights of the vendor or lessor are not determined. A case of this kind is now pending in the courts of Pennsylvania wherein it is sought to charge as a lien upon the building itself the

amount to be paid as rent under a contract. In this case the property in question consisted of steam boilers, firmly attached to real estate, and a demurrer was filed to the complaint. This action has been taken up to the Supreme Court of Pennsylvania, and the demurrer overruled, which means that the case must now be tried on its merits. *Wetherill v. Gallagher*, 211 Pa. 309.

When Vendor or Vendee Loses.

Where property is held under conditional contract of sale, lease or bailment and is destroyed before payment, the vendor loses. *Reitz's Appeal*, 64 Pa. 162.

It seems to be established law under such circumstances that the vendee is not only relieved from further payment but may recover an equitable portion of the amount he has paid. *Burson v. Fire Association*, 136 Pa. 284.

General Remarks.

A contract in the form of a chattel mortgage is not available to retain a lien in the mortgagee, even though acknowledged and recorded, except for railroad equipment and certain articles connected with the coal and iron industry (*Pepper & Lewis' Digest*, Vol. I, pp. 1605-14, §§ 160-184; Vol. II, p. 3964, § 149), and the only recognized method in this state for reserving a lien or title good as against all parties is by securing a personal property lease which shall be in the form of a bailment.

The questions arising where attempts are made to retain a lien or title in the vendor until the purchase price is paid have been extensively litigated in this state and the decisions are somewhat confused as to the distinction between contracts held to be conditional sales and those held to be bailments or leases.

The agreements passed upon in the following cases have been held to be bailments and valid as against third parties in favor of the bailor or lessor:

Crist v. Kleber et al, 79 Pa. 290;
Stiles v. Seaton, 200 Pa. 114;
Goss Printing Press Co. v. Jordan, 171 Pa. 474;
Myers v. Harvey, 2 P. & W. 478;
Clark v. Jack, 7 Watts 375;
McCullough v. Porter, 4 W. & S. 177;
Lehigh Co. v. Field, 8 W. & S. 232;
King v. Humphreys, 10 Pa. 217;
Chamberlin et al v. Smith, 44 Pa. 431;
Rowe v. Sharpe, 51 Pa. 26;
Becker v. Smith, 59 Pa. 469;
Enlow v. Klein, 79 Pa. 488;
Christie's Appeal, 85 Pa. 463;
Dondo v. Foulds, 105 Pa. 74;
Edward's Appeal, 105 Pa. 103;
Dittman v. Cottrell, 125 Pa. 606;
Brown Bros. & Co. v. Billington, 163 Pa. 76;
Stoddard v. Price, 143 Pa. 537.

The agreements passed upon in the following cases have been held to be conditional contracts of sale and not valid as to third parties:

Kelly Springfield Road Roller Co. v. Spyker, 215 Pa. 332, or 64 Atl. 546.
Ott v. Sweatman, 166 Pa. 217;
Haak v. Linderman & One, 64 Pa. 499;
Reitz's Appeal, 64 Pa. 164;
Morgan-Gardner Electric Co., 193 Pa. 351;
Martin v. Mathiot, 14 So. R. 214;
Jenkins v. Eichelberger, 4 Watts 121;
Prichett v. Cook, 62 Pa. 193;
Summerson v. Hicks et al, 134 Pa. 566;

Stemfieldt v. Huntsman & Co., 92 Pa. 53;
Brunswick & B. Co. v. Hoover et al, 95 Pa. 508;
Forrest v. Nelson & Co., 108 Pa. 481;
Peek v. Heim, 127 Pa. 500;
Waldron v. Haupt, 52 Pa. 411;
Publishing Co. v. Insurance Co., 189 Pa. 300;
Farquahar v. McAlevy, 142 Pa. 233;
Dearborn v. Raysor, 132 Pa. 231.

It is definitely settled, however, that while an owner may lease personal property by a contract in writing, he cannot provide specifically that the title shall remain in him until certain definite amounts of money are paid, and this is not necessary as he is in fact the owner.

In such a lease there must be a provision that the property in question is to be returned to the lessor when the term of the lease is ended. The contract may, however, provide that if the rent as specified is paid, the lessee may thereupon elect to become the owner of the leased property.

The distinction then between contracts held to be conditional sales and not available against bona fide purchasers and other third parties, and contracts held to be bailments or leases and absolute protection against all third parties except landlords, may be briefly stated as follows:

If the contract provide that title to the property is retained in the vendor until certain payments are made, and that a bill of sale for same will be executed to the vendee after such certain payments are received, and where there is no specified term of leasing and no agreement for return of the property, the contract is a conditional sale which in this state means it is an absolute sale as to all third parties.

If, on the other hand, the instrument provides for a definite term of leasing, with certain rent to be paid, and for return of the property at the end of such term, it is a lease or bailment, even though it provide that upon receipt of the full rent for the term as specified, the lessee or vendee may

elect to become, and shall thereupon become the owner of the leased property without further payment. There can, however, be no express provision for retention of title by the vendor or lessor, and no express provision for the giving of a bill of sale as the decisions hold that such agreements are entirely inconsistent with a lease. In many of the earlier decisions it was held that the lessee after payment in full of the rent as specified, might elect to purchase the property by paying a further consideration, however small. In the most recent cases before the highest court of the state, it has been decided that such payment of a further consideration is not essential and that the election alone is sufficient.

Such a lease should be signed by all parties thereto but no acknowledgment or proof is required, and it does not need to be either filed or recorded to hold title as against all third parties except a landlord's lien for rent.

Where there is a question as to which class a contract belongs and a levy under execution, attachment or otherwise is made on the property involved, the vendor upon learning the facts should immediately telegraph the officer in charge to the effect that the property in question is leased to the lessee or vendee and that same should not be sold. This information should be confirmed by registered letter to the officer, and an attorney immediately secured to attend the advertised sale and give notice to all parties of the bailor's or vendor's claim of title. The officer so notified will very seldom if ever dispose of the property, except subject to the vendor's or bailor's title, and any person buying at such a sale after the notice given is held in most cases to be not a bona fide purchaser for value, but only as taking the property subject to the vendor's or bailor's right.

In case of bankruptcy on the part of the vendee when the contract is in fact one of conditional sale, the status of the vendor varies with the conditions. If the vendee is declared a bankrupt or forced to make an assignment under state law

and a trustee is appointed by the court, there is no remedy for the vendor and he must accept his dividends, if any there be, as an unsecured creditor. If, however, the assignment is under the state law and is voluntary the trustee gets no better title than the assignor had and where the purchaser at such trustee's sale has had notice of the vendor's title before the sale, he takes the property subject to the lien.

In any case where the contract is in fact a conditional sale the general rule applies that a sale without notice to an innocent purchaser for value is valid. If the vendee has sold or given a lien upon the property to an innocent third party for value, or if under levy by execution or attachment or otherwise, the property has been sold by the officer before notice to such officer and to the purchaser as heretofore indicated, the buyer gets good title and the vendor loses his lien or interest. *In re Butterwick*, 12 Am. Bk. R. 536; *Collins et al v. Houston*, 138 Pa. 481; *Duplex Printing Press Co. v. Clipper Pub. Co.*, 213 Pa. 207; *Tams v. Bullitt*, 35 Pa. 308; *Wright & One v. Wigton*, 84 Pa. 163.

Where the vendor takes possession of property for non-payment or breach of contract he must return an equitable portion of the money received, which is usually the amount paid less a reasonable rental for the use of the property. The parties may, however, agree to waive any such repayment. *Rose v. Story*, 1 Pa. 190; *Simon v. Edmundson*, 10 Pa. C. C. 315.

Forms.

As already stated, in the State of Pennsylvania the only form of contract which will hold the legal title in the vendor or the lessor as against third parties is that of the bailment contract. The following instrument is of this nature and though informal is effective and may be safely used for Pennsylvania sales. Its somewhat obscure arrangement will on occasion be found of practical advantage.

The instrument is taken from a printed form in which blanks are left for the variable matter, such as number and size of safe, terms of payment, etc., etc., to be filled in at the time the sale is made according to the conditions.

BAILMENT CONTRACT.

Bradford, Pa., January 3rd, 1907.

H. K. Mfg. Co.,
Buffalo, N. Y.

Please send, as soon as convenient, one No. 5 "FIRE-PROOF" SAFE approximate size inside, 17 inches high, 12 inches wide, 11 inches deep, as per your illustrated catalogue, or plan on back hereof, if any, necessary alterations allowed. Ship via Penn. R. R., F. O. B. cars, at Buffalo, N. Y., and rent same to undersigned. This lease shall be for the term of 10 months from date, with rent payable as follows: Fifteen dollars on delivery of safe, rent for first two months; balance \$10.00 per month thereafter on the day of the month corresponding to the date of this lease.

It is agreed that said safe shall not be sublet to any other person, without your consent in writing, and shall be surrendered to you at the expiration of this lease, in as good condition as when taken, ordinary wear excepted. Provided if said rent shall be promptly and fully paid, whenever such payments shall amount to the sum stated below, the undersigned may elect to become owner of said safe. If any portion of said rent shall not be paid as agreed, or if any of the provisions of this lease be violated, all rent shall become due and payable forthwith, and you or your agent may take possession of and remove said safe, without legal process. All rent paid shall be retained by you as hire for said safe. All exemptions and all claims for damages are hereby waived. Nothing but shipment or delivery or actual acceptance in

writing, shall constitute your acceptance of this lease, and it is agreed same shall not be cancelled or annulled by the undersigned. Receipt of a duplicate hereof is hereby acknowledged. The foregoing embodies all agreements between the parties; it being understood that all claims of verbal or other agreements are hereby waived. It is understood that agents are not authorized to collect.

Truly yours,

GEORGE L. HODGSON.

Amount, \$75.00.

Accepted:

H. K. MFG. Co.,

HENRY SMITH, President.

RHODE ISLAND.

Legal Status of Conditional Contracts of Sale.

There is no express provision in the laws of this state for conditional contracts of sale but they are held to be valid by court decisions. *Goodell v. Fairbrother*, 12 R. I. 233; *Stearns v. Drake*, 24 R. I. 272; *Mosby v. Goff*, 21 R. I. 494, or 44 Atl. 930; *Putnam v. McLeod*, 23 R. I. 373, or 50 Atl. 646; *Carpenter v. Scott*, 13 R. I. 477.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as against all persons without acknowledgment by the vendee or vendor, or proof by subscribing witness, or filing or recording. The only possible exception is where the property has become a fixture upon real estate.

Recording or Filing.

There is no provision of law requiring that contracts of conditional sale shall be either recorded or filed. They are valid for the term of six years.

Landlord's Lien.

A landlord has no lien for rent against property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

There is no provision of law making it a crime to dispose of property held under conditional contract of sale but such sale is a conversion. *Putnam v. McLeod*, 23 R. I. 373, or 50 Atl. 646.

Money Judgment or Replevin.

The question as to whether a vendor under a conditional contract of sale may recover a money judgment for the contract price and if same is not paid afterwards replevin the property, has not been decided.

Fixtures.

There has been no decision by the courts of this state determining the rights of a vendor under conditional contract of sale where the property becomes a fixture upon real estate.

SOUTH CAROLINA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Civil Code, § 2655; *Singer Mfg. Co. v. Smith*, 19 S. E. 132; *Talbott v. Padgett*, 8 S. E. 845.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor. Civil Code, § 2655.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it is necessary that it be either filed or recorded as hereinafter set forth. To entitle such a contract to be filed it must be signed by a subscribing witness and before it may be recorded it must be both signed and proven by a subscribing witness. There seems to be no provision of law by which such a contract may be either filed or recorded without being so attested by a subscribing witness, even though it be acknowledged by both the vendee and vendor in person. Civil Code, §§ 948, 2456.

Recording or Filing.

In order to hold title as against third parties the original contract, duly signed by the vendee, must be either recorded or filed within forty days from the date thereof. Later filing or recording is notice to creditors subsequent to the date of filing or recording but not as to prior creditors.

Where the amount of such a contract is \$100.00 or less, the original may be filed if signed by the vendee and one subscribing witness, and it is not necessary that such subscribing witness shall prove the same by his oath.

Where the amount of such contract is more than \$100.00, the original must be recorded and before it may be so recorded it is necessary that the subscribing witness make oath that he saw the contract duly executed by the vendee. Such witness may be the salesman for the vendor, provided he does not also execute the contract for and on behalf of the vendor.

The original contract must be filed or recorded with the clerk of court in the county where the vendee resides, except in the counties of Charleston and Greenville where same must be either recorded or filed, as the case may be, with the register of mesne conveyances. Civil Code, §§ 945, 948, 950, 2656; *Milford v. Aiken*, 61 S. C. 110; *Perkins v. Bank*, 20 S. C. 759.

Recording Fee.

The fee for filing such a contract is ten cents or fifteen cents according to the county. It is better to send fifteen cents and then no question can arise.

The fee for recording is generally fifty cents for an instrument not exceeding one thousand words, and ten cents for each one hundred words over one thousand, but varies according to the county. In Orangeburg County the charge is six cents for each ninety words. Certain recording officers seek to charge a fixed fee of one dollar for a contract of

ordinary length, but there seems to be no provision of law for fees other than as stated above. Civil Code, §§ 3102-6.

Re-recording or Renewal.

Such a contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

Provision is made for discharge of such a contract from record after payment, but no definite penalty is fixed for failure. It is, however, always advisable upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received.

The fee for such discharge is ten cents or twenty-five cents according to the county. Civil Code, §§ 3102-4.

Landlord's Lien.

A landlord has no lien for rent on property located on his premises if such property has been sold under conditional contract of sale, and this is true whether the contract be filed or recorded, or not. He has, however, the right to pay the vendor any balance unpaid on such contract and can then subject the property to distress. Civil Code, §§ 2429-30; Ex Parte Knobloch, 26 S. C. 331.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to sell or otherwise dispose of property covered by a conditional contract of sale. Where the value of such property exceeds \$20.00, punishment for such unlawful disposal is a fine of not more than \$500.00 or imprisonment for not more than two years, or both. Where the value of the property is \$20.00 or less, the punishment is a fine of not more than \$100.00 or imprisonment for not more than thirty days. Criminal Code, § 337.

Money Judgment or Replevin.

The law is definitely settled in this state that where the vendor under conditional contract of sale sues and secures a money judgment he cannot thereafter replevin the property, except in case of fraud, even though such judgment be not paid. *Standard Sewing Machine Co. v. Alexander*, 68 S. C. 506.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such manner that same may be removed without material injury to the building or to itself, the courts have held that on failure of the contract payments the vendor is entitled to possession. Where the property has been so attached to a building as to become a material part thereof and incapable of being removed without great injury to the building or to itself, it cannot be taken possession of and the vendor's remedy is by an action in equity to charge the amount unpaid as a lien upon the building. *Padgett v. Cleveland*, 33 S. C. 339.

Forms.**AFFIDAVIT OF SUBSCRIBING WITNESS.**

STATE OF SOUTH CAROLINA, }
COUNTY OF SPARTANBURG. } ss.:

Personally appeared before me Andrew J. Stone, and made oath that he saw the within named James T. Reade sign, and as his act and deed, deliver the attached written agreement, and that he witnessed the execution thereof, and subscribed his name as witness thereto.

ANDREW J. STONE.

Sworn to and subscribed before me
this 27th day of May, 1907.

{ NOTARIAL } ROBERT G. WHEELER,
{ SEAL. } Notary Public, etc.

Officers Before Whom Affidavits May be Made.

Within the State. A commissioner appointed by the court of common pleas, or any other officer authorized to administer an oath.

Without the State but Within the United States. Any commissioner of deeds of the State of South Carolina; a clerk of any court of record; a notary public.

SOUTH DAKOTA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are recognized by statute law in this state and are held to be chattel mortgages. The provisions of the law are rather indefinite as to the manner in which such contracts shall be executed in order to be filed. Revised Civil Code, § 1315; *Rosenbaum v. Foss*, 56 N. W. 114.

How Executed.

Conditional contracts of sale must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

In such a contract, in addition to the usual matter, must appear a statement over the signature of the vendee, that a copy of the instrument in question has been delivered to him. If this be lacking the contract is void as between the parties themselves, and it cannot be filed so as to protect the vendor's title as against third parties. Revised Civil Code, §§ 1315, 2085, 2086, 2090-92.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid as to third parties the contract must

be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor in order that it may be filed, but to constitute a legal filing it is probably essential that the original contract be signed by two subscribing witnesses. Revised Civil Code, §§ 1315, 2085-6, 2090-2.

Recording or Filing.

In order to hold title as against third parties the original contract, duly signed by the vendee, must be filed with the register of deeds in the county where the vendee resides.

The law provides that a chattel mortgage must be signed by two subscribing witnesses before it can be filed, but does not require that such witnesses prove the contract by their oaths. The law as to conditional sales simply states that such contracts must be in writing and be filed with the register of deeds in the county where the vendee resides, but makes no provision as to the manner in which they shall be acknowledged or proven. A recent case holds that a conditional contract of sale is in effect a chattel mortgage. This has given rise to much confusion as to whether or not it is necessary that such a contract shall be signed by two subscribing witnesses before it can be filed. Many attorneys in this state hold that no subscribing witnesses are necessary where the contract is purely and simply one of conditional sale by which title only is retained in the vendor until full payment is made. On the other hand so many contracts contain provisions which make them something more than a mere conditional contract of sale that the only safe and sure rule to be followed in the execution of all such contracts is that they shall be signed by two subscribing witnesses. Then they are entitled to be filed and no question can be raised as to their legality. One of the subscribing witnesses may be the salesman for the vendor, provided he does not also execute the contract for and on behalf of the vendor. Revised Civil Code, §§ 1315, 2085-6, 2090, 2092; *Rosenbaum v. Foss*, 56 N. W. 119.

Recording Fee.

The fee for filing a chattel mortgage is ten cents, but some recording officers insist on receiving twenty-five cents, claiming that conditional contracts of sale are not all chattel mortgages. Political Code, § 1827.

Re-recording or Renewal.

Such a contract must be renewed within thirty days immediately preceding the end of three years from the date of previous filing and in like manner each three years thereafter, by filing in the office of the register of deeds for the county where the vendee resides, a copy of the instrument and an affidavit of the vendor, his agent or attorney, showing the amount unpaid.

Fees for renewal are the same as for original filing. Revised Civil Code, § 2089.

Discharge.

When the amount of a chattel mortgage is paid the instrument must be discharged within thirty days after such payment is received, and failure to do so is punishable by a fine of not less than \$5.00 and not more than \$50.00. There is no express provision requiring that conditional contracts of sale must be discharged, and no express penalty is provided for failure to make such discharge after payment. It is always advisable, however, upon request of the vendee or any proper party to discharge such a contract from record after payment in full has been received.

The recording officer is not entitled to a fee for entering a discharge. Revised Civil Code, §§ 2093-4.

Landlord's Lien.

A landlord has no lien for rent against personal property placed in his building or upon his premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to destroy, remove, conceal or in any manner dispose of or materially injure property held under a chattel mortgage, and such action is punishable upon conviction, by imprisonment in the state prison for a period not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding \$500.00.

There is no express statutory provision for punishment of like actions in regard to property held under conditional contract of sale, but the law as to chattel mortgages would undoubtedly apply. Penal Code, § 767.

Money Judgment or Replevin.

An action may be brought under conditional contract of sale and a money judgment recovered, and, if same cannot be collected, an action may afterwards be brought for possession of the property. *Dowagiac Mfg. Co. v. White Rock Co.*, 99 N. W. 854.

Fixtures.

There has been no determination in this state as to the rights of a conditional vendor where the property in question has been fastened to a building.

Forms.

AFFIDAVIT FOR REFILING WHERE VENDOR IS NOT A CORPORATION.

STATE OF SOUTH DAKOTA, }
COUNTY OF HUGHES. } ss.:

Fred J. Turner, being duly sworn, says he is the vendor ¹ named in the copy of contract hereto attached and that there is still unpaid under said contract the sum of \$320.00.

FRED. J. TURNER.

¹ Affidavit may be made by vendor's agent or attorney.

Subscribed and sworn to before me
this 18th day of March, 1907.

WEBSTER SILLIMAN,
Notary Public, etc.

AFFIDAVIT FOR REFILING WHERE VENDOR IS A CORPORATION.

STATE OF SOUTH DAKOTA, }
COUNTY OF LAWRENCE. } ss.:

Kenneth J. Marsh, being duly sworn, says he is Treasurer¹ of the Reaper Company, the vendor named in the copy of contract hereto attached; that there is still unpaid under said contract the sum of \$300.00.

KENNETH J. MARSH.

Subscribed and sworn to before me
this 25th day of April, 1907.

BENJAMIN P. CLARKE,
Notary Public, etc.

Officers Before Whom Acknowledgments May be Taken.

Within the State and within the judicial district, county, subdivision or city for which the officer was elected or appointed. Any judge or clerk of a court of record; United States, circuit or district court commissioners; mayors of cities; registers of deeds; county auditors; justices of the peace, or notaries public at any place in the state.

Without the State but Within the United States. Any commissioner appointed by the Governor of South Dakota; any justice, judge or clerk of any court of record whether United States, state or territorial; notaries public; any officer

¹ Any authorized agent, attorney or officer of corporation may make this affidavit.

authorized to take acknowledgments by the law of the state or territory in which the acknowledgment is to be taken.

TENNESSEE.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Act of Feb. 24th, 1899, Ch. 15; Bradshaw v. Thomas, 7 Yer 497; McCombs v. Guild & One, 9 Lea 81.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor. Act of Feb. 24th, 1899, Ch. 15.

Acknowledgment or Proof.

Such a contract is valid as between all persons without acknowledgment or proof or filing or recording. Act of Feb. 24, 1899, Ch. 15.

Landlord's Lien.

There is no provision of law giving landlords a lien for rent on personal property found on their premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime, punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$50.00 or both, to sell, give away, or otherwise conceal

or dispose of property held under conditional contract of sale, unless with the written consent of the vendor. If, however, in any such case the full balance due on such property and costs be paid before the offender is arraigned for trial, no punishment shall be inflicted. Act of March 3, 1899, Ch. 12.

Money Judgment or Replevin.

No decision by the courts in this state has been found establishing the right of a vendor to secure a money judgment, and if not collected, to afterwards replevin the property.

Fixtures.

Machinery for an ice plant sold under conditional contract of sale, was bolted to the floor of a building and fastened together through several rooms in such building. The vendor under such contract afterward sought to remove this property and a mortgagee of the real estate under a mortgage made subsequent to the conditional contract of sale and without notice of that contract, denied his right of removal. In an action for possession it was held that the machinery had become a part of the real estate and could not be taken away. *Union Bank et al v. Wolf et al*, 86 S. W. 310.

When Vendor or Vendee Loses.

Slaves were sold under conditional contract of sale by which all title was retained in vendor until payment in full. By the Emancipation Proclamation the slaves were freed. In a suit to recover their value it was held that vendee must stand the loss. *Planters Bank v. Van Dyke*, 4 Heisk 617; also *Marion Mfg. Co. v. Buchanan*, 99 S. W. 984.

General Remarks.

Where property held under conditional contract of sale is taken possession of because of non-payment, the vendor

must give ten days' notice of sale to the vendee in writing and must also post notice of such sale in two public places of the district where the vendee resides. After the sale is made the vendor may deduct the amount due to him together with expenses and must pay the balance over to the vendee. It is provided, however, that the vendee may by written contract waive the foregoing requirement of the law as to sale of the property.

If no waiver is signed by the vendee and no sale of the property is made by the vendor after taking possession of the property, the vendee may recover from the vendor all the payments he has made. Code of Tenn., §§ 3666-70; *Cowan v. Singer Mfg. Co.*, 92 Tenn. 376; *McCombs v. Guild & One*, 9 Lea 81; *Wilder v. Wilson*, 16 Lea 548; *Massillon Engine & Thresher Co. v. Wilkes*, 82 S. W. 316.

The sale of railroad equipment under conditional contract of sale must be acknowledged by the vendee and recorded in the office of the register of deeds for the county wherein is located the principal office of the vendee or lessee and also in the office of the Secretary of State. Each car, engine, etc., shall have the name of the vendor or lessor plainly marked on each side. Code of Tenn., §§ 3587-9.

TEXAS.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Sayles' Civil Statutes, Arts. 2549, 3327; Avery v. Mansur & T. I. Co., 37 S. W. 466; Eckford v. Berry, 27 S. W. 840.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, but in order to make it valid and to hold title as against third parties the contract must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness to entitle it to be so filed. Sayles' Civil Statutes, Arts. 2549, 3327.

Recording or Filing.

There is no provision for recording conditional contracts of sale in this state and in order to hold title as against third parties, the contract, duly signed by the vendee, must be filed.

There is no definite time prescribed within which such filing must be made, but, in order to avoid all question, the contract should be filed before the vendee gets possession of the property. If the vendee be a resident of the state the proper filing officer is the county clerk of the county where he resides, but otherwise the county clerk of the county where the property is to be held.

When the original contract is sent for filing it is not necessary that it should have been acknowledged by the vendee or vendor, nor be signed or proven by a subscribing witness. If, however, a copy is sent to be filed the original must accompany same and must have been witnessed by two persons or be acknowledged by the vendee in person. Formality is therefore avoided by sending the original for filing. Sayles' Civil Statutes, Arts. 2549, 3328-9; *Moore v. Masterson*, 46 S. W. 855; *Cameron Ice Co. v. Wallace*, 50 S. W. 628; *Hall v. Keating Implement Co.*, 77 S. W. 1054.

Recording Fee.

The fee for filing a conditional contract of sale is twenty-five cents. Sayles' Civil Statutes, Art. 2457.

Re-recording or Renewal.

Such a contract is valid for the term of four years. There is no provision for re-recording or renewal.

Discharge.

The law requires that a chattel mortgage shall be released after payment in full, but there is no express penalty for failure to make such a discharge. This law undoubtedly applies to conditional contracts of sale as they are held to be chattel mortgages. Upon request of any proper party, however, a satisfaction should be entered as otherwise any person injured could undoubtedly collect his actual damages.

The fee for discharging such a contract is twenty-five cents. Sayles' Civil Statutes, Arts. 2457, 3332.

Landlord's Lien.

A landlord's lien does not attach to goods, wares and merchandise of a merchant, trader or mechanic when sold and delivered to the tenant in good faith under a conditional contract of sale in the regular course of business. There seems, however, to be some uncertainty as to a landlord's rights, it having been held by court decisions that a landlord's lien for rent is prior to an unrecorded chattel mortgage. Under these conditions the contract should be filed before the vendee secures possession of the property. Sayles' Civil Stats., Art. 3238; *Rogers v. Grigg*, 29 S. W. 654.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to remove from the state, or to sell or dispose of property held under conditional contract of sale, punishable by imprisonment in the penitentiary for not less than two years and not more than five years. Willson's Penal Code, Art. 950; Supplement to Willson's Code of Criminal Procedure, Art. 235a.

Money Judgment or Replevin.

Where a money judgment is obtained for property sold under conditional contract of sale the vendor's lien is waived and he cannot afterwards replevin the property, no matter whether the judgment be paid or not. *Bank v. Thomas*, 69 Tex. 237; *Parlin & Harrell*, 8 Tex. Civ. App. 368; *Parlin & One v. Moline Plow Co.*, 27 S. W. 1087.

Fixtures.

Where the property sold under a conditional contract of sale is fastened to a building in such a manner that same

may be removed without material injury to the building or to itself, the courts of this state have decided that upon failure of the contract payments the vendor is entitled to possession of the property. Where the property has become so attached to a building as to become a material part thereof and incapable of being removed without great injury to the building or to itself, the vendor cannot take possession but must bring an action in equity to have the balance unpaid charged as a lien upon the building itself. *San Antonio Brewing Co. v. Arctic Ice Machine Co.*, 81 Tex. 99; *Anderson Electric Co. v. Cleburne Water Co.*, 27 S. W. 504; *Willis v. Munger*, 13 Tex. Civ., App. 677; *Harkey v. Cain*, 69 Tex. 146.

General Remarks.

A conditional contract of sale for railroad equipment or rolling stock must be recorded in the office of the Secretary of State and upon payment in full the vendor, lessor or bailor, or his or its assigns, shall make a declaration to that effect, which said declaration may be made on the page of the record, or by a separate instrument duly acknowledged and recorded. The Secretary of State shall receive a fee of \$5.00 for recording such a contract and \$5.00 for recording such a declaration and a fee of \$1.00 for entering such a declaration on the record. *Sayles' Civil Statutes*, § 3328.

UTAH.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are not provided for by statute law in this state, except as to railroad equipment, but are recognized by court decisions. *Freed Furniture & Carpet Co. v. Sorensen*, 79 Pac. 564; *Standard Steam Laundry v. Dole*, 61 Pac. 1103.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording. *Freed Furniture & Carpet Co. v. Sorensen*, 79 Pac. 564; *Standard Steam Laundry v. Dole*, 61 Pac. 1103.

Recording or Filing.

Chattel mortgages must be filed to hold the mortgagor's lien as against other creditors or purchasers for value. In a recent case, it is, however, expressly declared that a conditional contract of sale is not a chattel mortgage and that it is unnecessary to either file or record such a contract in order to hold title as against all third parties.

The law as to chattel mortgages provides that such instruments must be witnessed by at least one person before they can be filed and in addition the mortgage must be accompanied by an affidavit of the parties thereto, or in case either party is absent from the state, of the party present, and that of the agent or attorney for the absent party, that same is made in good faith to secure the amount named therein and without intent to hinder or delay creditors.

The original or a certified copy of such mortgage with its affidavit attached, must be filed in the office of the county recorder where the mortgagor resides, or if he is a non-resident of the state then in the county recorder's office of the county where the property is situated.

Fee for filing, twenty-five cents, and where more than two names are to be indexed, ten cents for each additional name.

In order that a chattel mortgage shall remain valid as against third parties, the mortgagee must file an affidavit made by himself, his agent or attorney showing his interest in the mortgage and the amount still unpaid. This affidavit must be filed in the same office where the mortgage is filed and must be presented for refiling within thirty days immediately preceding the end of one year from the date of the previous filing. No chattel mortgage can be kept valid for a period of more than five years. Statutes of Utah, §§ 150, 151, 155, 159; *Freed Furniture & Carpet Co. v. Sorensen*, 79 Pac. 564.

Discharge.

There is no provision in this state for discharge of a conditional contract of sale. A chattel mortgage must be discharged when paid and the wilful neglect of the mortgagee or his representative to discharge after receiving ten days' notice so to do, renders him liable to a penalty in the sum of \$50.00.

Landlord's Lien.

A landlord has no lien for rent on property located upon his premises when such property is covered by a conditional contract of sale. Revised Statutes, §§ 1407-8, 1414.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to dispose of property held under chattel mortgage, punishable by fine of not more than three times the value of the property, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. There is no special provision making it a crime to sell or dispose of property held under conditional contract of sale but were it not for the decision of *Freed Furniture & Carpet Co. v. Sorensen*, 79 Pac. 564, holding that a conditional contract of sale is not a chattel mortgage, it would seem that the disposing of property conditionally sold would be punishable as is such disposition of property held under chattel mortgage. Statutes of Utah, § 166. (See pp. 13, 14.)

Money Judgment or Replevin.

The question as to whether a vendor under conditional contract of sale may sue for a money judgment and if no collection is made, afterwards replevin the property, has not been passed upon by the courts of this state.

Fixtures.

The rights of the vendor under conditional contracts of sale where the property has been attached to a building have not been determined.

General Remarks.

A conditional contract of sale covering railroad equipment must, in order to be valid as to subsequent judgment

creditors or bona fide purchasers for value, be in writing signed by all parties and acknowledged by vendee, and be filed for record in the office of the Secretary of State, and each engine, car, etc., shall have plainly marked on each side thereof the name of the vendor, lessor or bailor in letters at least one inch in size, followed by the word "Vendor," "Lessor," or "Bailor," as the case may be.

The fee for recording such a contract is fifty cents for the first folio and twenty cents for each additional folio. When such a contract has been paid in full, the vendor, lessor or bailor or his assignee shall make a declaration in writing to that effect, which may be made either on the margin of the record or as a separate instrument which must then be recorded. Laws of 1905, Ch. 4.

UTAH.

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VERMONT.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Vermont Statutes, § 2290.

How Executed.

The law provides that there shall be an instrument in writing containing a memorandum of the agreement, which shall be signed by the purchaser and shall show the amount to be paid. In other words the contract must be in writing signed by the vendee but does not need to be signed by the vendor. Vermont Statutes, § 2290.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it is necessary that same should be recorded. Vermont Statutes, § 2290.

Recording or Filing.

The original contract, within thirty days after delivery of the property, must be recorded with the town clerk of the town where the purchaser resides if within the state, and if not so resident, then in the same office of the town where the vendor resides.

It is not necessary that such a contract be acknowledged by the vendee nor that it be signed or proven by a subscrib-

ing witness in order to be recorded. There is no provision for filing such a contract. Vermont Statutes, § 2290.

Recording Fee.

The fee for recording such an instrument is ten cents per folio of one hundred words; no charge to be less than twenty-five cents. Vermont Statutes, § 5409.

Re-recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

The vendor shall after full payment of the contract and upon tender of reasonable fees for such service, discharge such lien within ten days after notice, or be liable to payment of \$10.00 fine and all damages occasioned by his failure so to do. Such contract may be discharged by an entry acknowledging satisfaction of the lien and made by the vendor, his executor, attorney or assigns on the page of the book where the contract is recorded, or by a like entry on the writing creating the lien. Or the contract may be discharged by recording a release executed by the vendor or his representatives as named above.

Fee for release, ten cents per folio of one hundred words. Vermont Statutes, § 2291-92.

Landlord's Lien.

The law does not give the landlord a lien for rent upon personal property located on his premises.

Criminal Liability of Vendee for Disposal of Property.

If a person in possession of personal property which has a duly recorded lien reserved thereon, sells, conceals or removes such property from the state without consent of the vendor and with intent to defraud, etc., he shall be fined a sum not exceeding double the value of the property, one-half of such fine to be paid to the vendor and one-half to the municipal treasury liable for the payment of the costs of such prosecution, *i. e.* of the town, city or village where prosecution takes place. Vermont Statutes, § 2297.

Money Judgment or Replevin.

Where a judgment is obtained for the purchase price of property sold under conditional contract of sale, the vendor cannot afterwards replevin the property. *Root v. Lord*, 23 Vt. 568.

Fixtures.

Where personal property sold under conditional contract of sale has been fastened to a building in such manner that it may be removed without material injury to the building or to itself, the vendor is entitled to possession upon failure of the contract payments. If, however, the property has been so attached to the building as to become a material part thereof, and so it cannot be removed without great injury to the building or to itself, the vendor cannot recover the property but must bring an action in equity to have the balance unpaid on the contract declared a lien against the building itself. *Devanport v. Shantz*, 43 Vt. 546; *Buzzell v. Cummings*, 61 Vt. 213; *Paine v. McDowell*, 71 Vt. 28.

When Vendor or Vendee Loses.

A horse, wagon and harness were sold under agreement that title should not pass until paid for. The horse died after

delivery and vendee refused payment. In a suit brought to recover the unpaid balance it was held that vendee was liable. *La Valley v. Ravenna*, 62 Atl. 47.

General Remarks.

Thirty days after the terms of a conditional contract of sale are broken, the vendor or his assigns may cause the property to be sold by a public officer at public auction in the town where vendee resides or where such property is located. Ten days' notice of such sale shall be given by posting written notice thereof in two public places in said town and by serving such notice personally on the vendee if a resident of the town, or by mail if he is not, at least ten days before the date of sale. Out of the proceeds of such sale the vendor shall be paid the amount due under his contract with costs and expenses, and the balance must be paid over to the vendee. Any vendor who takes possession of the property under a conditional contract of sale and does not sell it as above provided shall be liable for conversion. The requirements as to sale can, however, undoubtedly be avoided by means of a written contract between the vendee and vendor, wherein the vendor agrees to release the vendee from further payments and as a consideration therefor the vendee releases the vendor from his obligation to make a sale. Vermont Statutes, §§ 2293, 2294.

VIRGINIA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Virginia Code, § 2462, Subdiv. I.

How Executed.

They must be in writing and be signed by all parties thereto. Virginia Code, § 2462, Subdiv. I.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties a memorandum thereof must be docketed, which is in effect the filing of a copy of the instrument and the indexing of same to the names of the parties thereto. It is not necessary that the contract be either acknowledged by the vendee or vendor in person, nor that it be signed or proven by a subscribing witness in order that it may be docketed. Virginia Code, § 2462, Subdiv. I.

Recording or Filing.

In order to hold title as against third parties the contract must be duly signed by the vendee and vendor and a memorandum of this contract must be docketed. There is no definite time within which this docketing shall be made, but it should, if possible, be before the vendee secures possession of the property.

The memorandum or copy of the contract must be sent to the office of the clerk of the circuit court of the county where the goods may be, unless they are in a corporation or city with a population of 5,000 or over. In this case it must be sent to the clerk's office of the corporation court, except in the city of Richmond, where it must be sent to the office of the clerk of the chancery court.

The law provides that a memorandum of the contract must be docketed and that such memorandum must set forth the debt, the amount due, when and how paid and a brief description of the goods. There is, however, usually some difficulty in preparing such a memorandum, and for this reason the original contract or a certified copy is more conveniently sent and is always docketed without question.

Fee for docketing such contract, twenty-five cents. Virginia Code, § 2462, Subdiv. I.

Re-recording or Renewal.

The contract is valid for the term of five years. There is no provision for re-recording or renewal.

Discharge.

Such a contract must be discharged after payment and a failure on the part of the vendor to make such discharge after receiving fifteen days' notice so to do subjects him to a penalty of \$5.00, payable to the vendee. The contract may be discharged either by the vendor, or his duly authorized agent or attorney, appearing in person before the clerk and marking the contract "Released" on the page of the book where docketed, which action shall be attested by the clerk, or otherwise by a written request to discharge sent to the clerk in whose office the instrument is docketed, such request being signed by the vendor, his agent or attorney, and showing that the amount under the contract has been paid in full.

Such a writing should be in the form of a release. Fee for release, twenty-five cents. Virginia Code, § 2462a.

Landlord's Lien.

A landlord's lien for rent of the building in which property held under conditional contract of sale is placed is prior to such contract unless same has been docketed before the property is moved upon his premises. Virginia Code, § 2791.

Criminal Liability of Vendee for Disposal of Property.

Selling or disposing of property held under conditional contract of sale, unless with the written consent of the vendor, is a crime punishable as larceny. Where the value of the property is less than \$50.00 the punishment is by imprisonment in the county jail for not less than fifteen days nor more than six months, or by a fine of not less than \$5.00 nor more than \$100.00, or both. Where the value of the property is \$50.00 or more, the punishment is by imprisonment in the penitentiary for not less than one year nor more than ten years. Virginia Code, §§ 3707, 3719a.

Money Judgment or Replevin.

No decision has been made by the courts as to whether or not a vendor may sue for a money judgment, and if unable to collect, thereafter replevin the property.

Fixtures.

No determination has been made as to the rights of the vendor where property sold under conditional contract of sale has been attached to a building.

General Remarks.

A conditional contract of sale covering railroad equipment is docketed in the clerk's office as heretofore set forth

in the county, corporation or district where the principal office of the vendee is located, or if in the city of Richmond, in the office of the clerk of the chancery court. Such contracts must also be filed with the State Corporation Commission, and each car covered by any such contract shall have plainly marked on the side thereof, the name of the vendor followed by the word "Owner." In order to be docketed the contract must be acknowledged by the vendee in person. Virginia Code, § 2462, Subdiv. I.

WASHINGTON.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Ballinger's Codes and Statutes, § 4585; Petersen v. Woolery, 9 Wash. 390; Rumpf v. Barto, 10 Wash. 382; Edison Gen'l Electric Co. v. Walter, 10 Wash. 14; Quinn v. Park & Lacy Co., 5 Wash. 276; Cherry v. Arthur, 5 Wash. 787.

How Executed.

They must be in writing and be signed by all parties thereto. Ballinger's Codes & Statutes, § 4585.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be filed. It is not necessary that the contract be acknowledged by either the vendee or vendor, nor that it be signed or proven by a subscribing witness, in order to entitle it to be filed. Ballinger's Codes & Statutes, § 4585.

Recording or Filing.

There is no provision for recording in this state and in order to hold title as against third parties it is necessary that the contract, duly signed by the vendee and vendor, or a memorandum of such contract, be filed in the auditor's office of the county where the vendee resides. This filing must be made

within ten days after the vendee takes possession. A copy of the original may be used for such filing. Ballinger's Codes & Statutes, § 4585.

Recording Fee.

The fee for filing such a contract is ten cents. If more than two names are signed to the contract five cents must be paid for indexing each additional name. Supplement to Ballinger's Codes & Statutes, § 1609.

Re-recording or Renewal.

Such a contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

When a chattel mortgage has been fully paid, it must be discharged within sixty days after request or demand is made by the vendee and a failure to comply is punishable by a fine of \$25.00. If the mortgagee fails or refuses to make such discharge a court of record within the state upon proper proof thereof may order the instrument discharged. Fee for discharge, twenty-five cents. There is no express provision of law requiring the discharge of a conditional contract of sale after payment. Ballinger's Codes & Statutes, §§ 4563-4, 4586; Supplement to Ballinger's Codes & Statutes, § 1609.

Landlord's Lien.

There is no provision of law giving landlords a lien for rent against personal property located upon their premises.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to injure, destroy, conceal or remove from the county where same is situated, property covered by a chattel

mortgage, without the consent of the mortgagee. Such acts are punishable as a misdemeanor by imprisonment in the county jail for not more than six months or by a fine of not more than twice the value of the property, or both. There seems to be no express provision of law for punishing like actions against property held under conditional contract of sale. Ballinger's Codes & Statutes, § 4560. (See pp. 13, 14.)

Money Judgment or Replevin.

No decision seems to have been made in this state governing a vendor's right to secure a money judgment and later recover the property if the judgment is not paid.

Fixtures.

Where property held under conditional contract of sale is attached to a building in such manner that it may be removed without material injury to the building or to itself, the vendor, on failure of the contract payments, is entitled to possession. If, however, the property cannot be removed without great damage to the building or to itself, the vendor cannot take possession. His remedy then is by an action in equity to enforce a lien against the building for the balance unpaid. *Washington N. B. v. Smith*, 15 Wash. 160; *German Saving Society v. Weber*, 16 Wash. 95; *Cherry v. Arthur*, 5 Wash. 787; *Wade v. Donau Brewing Co.*, 10 Wash. 284.

When Vendor or Vendee Loses.

Machinery was sold under a contract by the terms of which title was not to pass until payment in full had been received. Upon the destruction of the property by fire before it was paid for, it was held that the vendor could not recover the balance unpaid. *Arthur & Co. v. Blackman*, 63 Fed. 536.

General Remarks.

In order to retain title in the vendor as to third parties when railroad equipment is delivered under conditional contract of sale, the contract must be duly acknowledged in the same manner as a deed of real estate, and be recorded in the auditor's office of the county wherein, at the time of execution of such contract, is situated the principal office of the vendee within the state, and each car, engine, etc., shall have marked on each side the name of the vendor or lessor followed by the word "Owner " or "Lessor." Ballinger's Codes & Statutes, §§ 4588-89.

WASHINGTON.

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WEST VIRGINIA.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law and are held valid by court decisions. Code of W. Va., Ch. 74, §§ 3-10; *Hatfield v. Haubert*, 41 S. E. 144; *Troy Wagon Works v. Hutton*, 44 S. E. 135.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be recorded. It is not necessary in order to be recorded that the contract be either acknowledged by the vendor or vendee nor that it be signed or proven by a subscribing witness. *Hatfield v. Haubert*, 41 S. E. 144; *Troy Wagon Works v. Hutton*, 44 S. E. 135.

Recording or Filing.

There is no provision for filing in this state and in order to hold title as against third persons the original contract,

duly signed by the vendee, must be recorded. There is no definite time within which this recording must be done, but in order to avoid all question the contract should be recorded before the vendee secures possession of the property. The proper recording officer is the clerk of the county court in the county where the property is situated, and the instrument is recorded in the book of miscellaneous records. If property held under such a contract be removed to another county the contract must be recorded there within three months in the office of the clerk of the county court. *Hatfield v. Haubert et al*, 41 S. E. Rep. 144; *Troy Wagon Works v. Hutton*, 44 S. E. Rep. 135; *Laws of W. Va., Ch. 74, §§ 4, 5, 7.*

Recording Fee.

The fees for recording conditional contracts of sale are not specifically provided, and the proper fee is therefore somewhat in doubt. On many instruments the clerk has a right to charge three cents for each thirty words, or he may charge seventy-five cents as a minimum fee. Also the laws provide for a charge of fifty cents upon indexing certain papers, and most recording officers attempt to collect this amount as well. Where one dollar is sent with a paper it usually insures prompt recording. *Laws of W. Va., Ch. 137, § 7.*

Re-recording or Renewal.

Conditional contracts of sale are valid for the term of ten years. There is no provision for re-recording or renewal.

Discharge.

There is no special provision for releasing a conditional contract of sale from record and no penalty is provided for failure to discharge same from record after payment. It is always advisable, however, to send a release on request of

the vendor or other proper party, no matter in what state or under what conditions the contract is filed or recorded. The fee for discharge is fifty cents. Laws of W. Va., Ch. 137, § 7.

Landlord's Lien.

A landlord's lien for rent of the building in which property covered by conditional contract of sale is placed is prior to such contract unless same is recorded before the property is moved upon his premises. Code, p. 756, §§ 10, 11; *Huffard v. Akers*, 52 W. Va. 21, or 43 S. E. 124; *Bartlett v. Loundes*, 34 W. Va. 493.

Criminal Liability of Vendee for Disposal of Property.

There is no provision of law making it a crime to sell or dispose of property held under conditional contract of sale. (See pp. 13, 14.)

Money Judgment or Replevin.

No determination has been made as to whether or not a vendor may bring action for a money judgment, and, if unable to collect, thereafter replevin the property.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that on failure of the contract payments the vendor is entitled to possession. Where, however, the property has been so attached to a building as to become a material part thereof, and so that it cannot be removed without great injury to the building or to itself, the vendor cannot take possession and his remedy is by an action to have the amount unpaid charged as a lien against the

building itself. Hurxthal v. Hurxthal, 45 W. Va. 584, or 32 S. E. 237.

General Remarks.

In order that a contract of conditional sale covering railroad equipment shall be valid as to third parties, a notice thereof must be recorded in the office of the Secretary of State. Fee \$5.00. Code of W. Va., Ch. 74, § 3.

WISCONSIN.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Wisconsin Statutes, § 2317.

How Executed.

They must be in writing signed by all parties thereto and where the contract is for sale of household furniture, a copy of the instrument must be delivered to the vendee at the time of sale. Wisconsin Statutes, §§ 2317, 2319b; Kimball v. Mellon, 80 Wis. 133; Sheldon & Co. v. Mayers, 81 Wis. 627.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third persons the contract must be filed. It is not necessary that the contract be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness, in order to entitle it to be filed. Wisconsin Statutes, §§ 2317, 2319b.

Recording or Filing.

There is no provision in this state for recording conditional contracts of sale. They may be filed, however, and must be filed in order to hold title as against third persons. The contract must be duly signed by all the parties and a copy may then be filed in the office of the clerk of the town, city or village where the vendee resides if a resident of the state;

or, if not a resident of the state, then in the clerk's office of the town, city or village where the property is located. There is no definite time within which this filing must be made, but in order to avoid all question the contract should be filed before the vendee secures possession of the property.

Where property is brought into the state subject to a conditional contract of sale made between non-residents of a state in which no filing is necessary, the laws of that state will be recognized and the contract be held valid in Wisconsin without filing. Wisconsin Statutes, §§ 2317, 2319b; *Mershon v. Moors*, 76 Wis. 502.

Recording Fee.

The fee for filing a conditional contract of sale is twelve cents. Wisconsin Statutes, § 834.

Re-recording or Renewal.

There is no provision for refileing or renewal and the vendor's lien cannot be preserved for more than one year after the last payment becomes due.

Discharge.

Provision is made by the statutes for discharge of a chattel mortgage after payment, but no penalty is fixed for failure. There is no express requirement that conditional contracts of sale shall be discharged after payment. It is, however, always advisable to furnish a discharge upon request of the vendee or any other proper party, as the person injured by a failure so to do could undoubtedly collect his actual damages. Fee for filing discharge, ten cents. Wisconsin Statutes, § 2317a.

Landlord's Lien.

The owner of a building has no lien for rent on personal property covered by conditional contract of sale even though the property is moved into his premises before the contract is properly filed.

Criminal Liability of Vendee for Disposal of Property.

It is a crime to sell or dispose of chattel mortgaged property, punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$100.00. There is, however, no special provision of law making it a crime to sell or dispose of property held under conditional contract of sale. Wisconsin Statutes, § 4467. (See pp. 13, 14.)

Money Judgment or Replevin.

It cannot be said that the courts of Wisconsin have definitely settled either that a vendor may recover a money judgment and afterward, if same is not paid, replevin the property; or that if he elects to sue upon the contract such action precludes him from afterward enforcing his security against the property. The trend of existing decisions indicates, however, that it would be held on a direct issue that the vendor must elect which remedy he will pursue and cannot have both. *Fuller-Warren Co. v. Harter*, 110 Wis. 80.

Fixtures.

If personal property is incorporated into mortgaged real estate it becomes a part of such real property and cannot be removed even though covered by a conditional contract of sale. The vendor must under such circumstances enforce his claim as a lien upon the building itself. *Cooper v. Cleghorn*, 50 Wis. 113; *Fuller-Warren Co. v. Harter*, 110 Wis. 80; *Kendall Mfg. Co. v. Rundle*, 78 Wis. 150.

When Vendor or Vendee Loses.

Logs were sold under conditional contract of sale and title retained in vendor until the logs should be scaled at vendee's mill. The logs were delivered in a boom at such mill but before being scaled the boom burst and logs were lost. Vendor was allowed to recover the price. *Osborne v. South Shore Lumber Co.*, 91 Wis. 526.

General Remarks.

Where the contract is for household furniture the payments must be endorsed on the copy of the contract held by the vendee if so requested by him. The vendor when taking possession of such furniture on failure of the contract payments, must furnish the vendee an itemized statement showing the amount due and unpaid, and the vendee may within fifteen days thereafter redeem the property by paying the full amount unpaid together with the interest and the lawful charges and expenses. Wisconsin Statutes, § 2317b.

WYOMING.

Legal Status of Conditional Contracts of Sale.

Conditional contracts of sale are provided for by statute law in this state. Revised Statutes, § 2837; Warner v. Roth, 2 Wy. 63.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. Revised Statutes, § 2837.

Recording or Filing.

There is no provision in this state for recording conditional contracts of sale. They may, however, be filed, and in order to hold title as against third parties the original contract must be duly signed by the vendee and a copy thereof

be filed with the county clerk of the county where the property is located. There is no specified time within which such filing must be made, but in order to avoid all question the contract should be filed before the vendee secures possession of the property. The copy of the contract must, when filed, have attached thereto an affidavit of the vendor, his agent or attorney, which shall state the names of said vendor and vendee, or lessor and lessee and give a description of the property with the full and true interest of the vendor or lessor therein. The form of this affidavit is the same as that required in Nebraska. Revised Statutes, § 2837.

Recording Fee.

The fee for filing a conditional contract of sale is twenty-five cents. Revised Statutes, § 2838.

Re-recording or Renewal.

Conditional contracts of sale must be renewed by filing within thirty days immediately preceding the end of one year from the previous filing a copy of said contract to which should be attached an affidavit similar to that employed when the original filing was made. Fee for refileing, twenty-five cents. Revised Statutes, §§ 2837-8.

Discharge.

There is no provision for discharge of conditional contracts of sale after payment and no express penalty for failure to discharge. It is always advisable, however, upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received.

Landlord's Lien.

There is no provision of law giving a landlord a lien for rent upon personal property located on his premises. He

certainly could have none where a conditional contract of sale covering such property was properly filed before the property was placed thereon.

Criminal Liability of Vendee for Disposal of Property.

Any person who disposes of or removes property covered by a chattel mortgage from the county where located shall be guilty of a felony punishable by imprisonment in the penitentiary for not more than ten years, or by a fine of not more than \$500.00. The same penalty is provided for like action in regard to property held under conditional contract of sale. Revised Statutes, § 5012.

Money Judgment or Replevin.

The courts of this state have made no decision as to whether or not the vendor under conditional contract of sale may secure a judgment for the purchase price, and if unable to collect may afterwards replevin the property.

Fixtures.

There has been no determination in this state as to the rights of a conditional vendor where property held under conditional contract of sale has been attached to a building.

General Remarks.

Conditional contracts of sale covering railroad equipment must be signed by both parties and acknowledged by the vendee in person. The original must then be filed in the office of the Secretary of the State, and each engine, car, etc. must have the name of the vendor, lienor or bailor plainly marked on each side followed by the word "Vendor," "Lienor" or "Bailor" as the case may be. Revised Statutes, § 2839.

Forms.**AFFIDAVIT WHERE VENDOR IS NOT
A CORPORATION.**

STATE OF WYOMING, }
COUNTY OF LARAMIE. } ss.:

Henry Martin, being duly sworn, says he is the lessor ¹ and Richard Markham of Cheyenne, Wyoming, is the lessee of the safe described in copy of contract hereto attached, and the full and true interest of said lessor in said safe is that of owner.

HENRY MARTIN.

Subscribed and sworn to before me
this 2nd day of May, 1907.

JAMES P. FITZGERALD,
Notary Public, etc.

AFFIDAVIT WHERE VENDOR IS A CORPORATION.

STATE OF WYOMING, }
COUNTY OF CONVERSE. } ss.:

John Richardson, being duly sworn, says he is the attorney² for Cary Safe Company, a corporation; that said Cary Safe Company is the lessor, and Henry Harding of Douglas, Wyoming, the lessee of the safe described in copy of contract attached hereto, and the full and true interest of said lessor in said safe is that of owner.

JOHN RICHARDSON.

Subscribed and sworn to before me
this 15th day of April, 1907.

HERBERT J. MILBURN,
Notary Public, etc.

¹ Affidavit may be made by vendor's agent or attorney.

² Affidavit may be made by any duly authorized officer, attorney or agent of the corporation.

Officers Before Whom Acknowledgments May be Taken.

Within the State. Any judge or clerk of a court of record; a United States court commissioner; county clerks; justices of the peace; notaries public.

Without the State but Within the United States. Commissioners of Wyoming; any clerk of a court of record; also any other officer authorized by law to take acknowledgments at place where such acknowledgment is to be taken, but the official position, signature and regularity of such official must be certified by a clerk of a court of record or a county clerk of the same place under seal.

PART V.

FORMS.

PRACTICAL SUGGESTIONS.

Form of Contract.

It is essential in almost every case that a conditional contract of sale be in writing. It is also desirable that such a contract should be a clear and concise statement of the agreement between the parties with no unnecessary verbiage. A lengthy contract not only requires more time for preparation but in those states where the contract must be recorded, increases the cost of recording materially. Exceptional cases will arise, as for example, where specifications for construction work are included, in which the contract must of necessity be voluminous. Experience has shown, however, that five hundred words or even less are sufficient to cover any ordinary transaction.

Unilateral Contracts.

A unilateral or one-party contract is an offer or proposed contract which has been signed by one of the parties, but which has not been signed or formally accepted by the other party. This second party may then, at his option, either complete the contract by acceptance, or allow it to lapse by non-acceptance. Such contracts are common, as for instance, an order for goods which is signed by the vendee but is not ordinarily signed or formally accepted by the vendor.

In nearly all the states contracts of this kind are held to be valid without any formal written acceptance on the part

of the vendor. Even in those states where, by statute law or by court decision, a different rule prevails, such an order signed by the vendee alone, is at once transformed by the mere endorsement of the word "Accepted" followed by the signature of the vendor into an ordinary two-party contract of a legal and binding nature. In most states, however, an unwritten acceptance of the order by the vendor, shown by his acting upon it, is held to be sufficient to complete the contract, and it is then binding upon both parties with the same force and effect as if it had been signed by both.

When goods are sold on conditional sale the unilateral contract is commonly employed, usually in the form of an offer or order signed by the prospective vendee and directed to the vendor. This form of contract or order is desirable because of the fact that it is in no way binding upon the prospective vendor until accepted by him.

The advantage of such a condition is obvious. Only in rare instances can it be considered safe to clothe the salesman with authority to actually bind his principal when credit is to be given the vendee. -Such authority is better vested, so far as possible, in the credit department of the vendor where orders may be acted upon with calm and intelligent consideration. The unilateral contract permits this to be done. If the investigations of the credit department prove the sale to be desirable, the contract may then be accepted and made binding on all parties. If, however, investigation shows that the proposed sale is not safe or is not desirable, the contract may be rejected without thereby involving the vendor in a liability for damages.

In any such case, if an order is approved, its acceptance may be evidenced either by a writing sent to the vendee, by a formal acceptance endorsed on the order, or by action thereon, as, for instance, ordering material required for the manufacture of the goods, or actually starting work upon their construction or manufacture, or, if they are ready for delivery, the actual shipment of the goods. It is, however, always

both prudent and courteous to acknowledge receipt of the order at the earliest possible moment, stating either the fact of its acceptance or rejection.

The one objection to the unilateral or order contract as usually employed in conditional sales, is the fact that it is not immediately binding upon the vendee but may be cancelled or countermanded by him at any time up to its actual acceptance by the vendor. Occasionally orders are so cancelled and this would not be possible if the salesman were authorized to accept the order and did so accept it at the time it was given. On the other hand, as already intimated, the salesman is not usually competent to judge of the credit conditions under which an order is given, or to conduct an adequate investigation of the vendee's standing, and in practice the losses incurred by reason of cancellations are far more than offset by the losses avoided by the rejection of orders which are shown by investigation to be doubtful or worthless.

Acknowledgment or Proof.

An order having been accepted, it becomes necessary in many states to have this completed contract, or a copy or memorandum thereof, filed or recorded with the proper official. Usually before such a contract will be filed or recorded, it must be acknowledged or proven in the manner provided by statute. In some few states this proof must be in the form of an acknowledgment by the vendee. Usually, however, if the contract is signed by the vendee it may be proven by the oath of a subscribing witness and will then be received for filing or recording without the vendee's acknowledgment. As it is almost always difficult to induce the vendee to acknowledge a conditional contract of sale, this proof by a subscribing witness is the preferable alternative and is, wherever allowed, the usual method of proof. Here comes in another advantage to the vendor in the use of the usual signed order or unilateral

contract. The salesman who takes such an order does not execute the contract on behalf of the vendor and may therefore attach his name to the contract as a subscribing witness. If he so acts he may at any time thereafter prove the contract by his oath, thereby completing the necessary formalities and enabling the filing or recording of the contract without recourse to, and even without the knowledge of the vendee.

Time of Filing or Recording.

In a few states (indicated in Part IV of the present volume) a contract of conditional sale should be filed or recorded immediately after the order has been accepted and before delivery of the goods. Outside of these few states, however, the contract need not ordinarily be filed or recorded until shipment has been made, and in practice the shipment itself is usually relied upon to indicate the date when the contract must be sent for filing or recording.

Procedure for Filing or Recording.

The records, or a memorandum of the shipments made each day, if turned over to the person having charge of the conditional contracts of sale, will serve as a convenient means of informing him as to the contracts which must then be filed or recorded.

If the original contract is sent for filing or recording, a sworn copy should replace it in the files of the vendor, and the date when the original was sent, and where and to whom should be endorsed upon this copy. If a copy or a memorandum is sent, a like endorsement should be made upon or be attached to the original contract, which is kept in the files of the vendor.

Where order books or other similar records are kept, a notation to the same effect made on these books against the particular order, will be found a convenience. A list of the

contracts sent for filing or recording should also be kept and should show the name of the officer to whom sent and the place and date of sending.

A form letter to accompany contracts when sent to the filing or recording officer, may easily be arranged so as to be suitable for all cases, and, when required, is prepared for use by simply filling in a few blanks. The letter should, as a matter of course, request the officer addressed to advise the sender of the receipt of the contract and the date on which it is filed or recorded in his office. A form letter of this kind is given on a later page of the present volume.

When notice is received that a contract has been filed or recorded, this information should be noted against the particular contract on the list of contracts sent for filing or recording. If no reply to the form letter is received within a reasonable time, say ten or fifteen days, the fact can easily be ascertained by reference to this same list. The officer to whom the contract was sent may then be written to again and the matter be followed up until brought to a satisfactory conclusion.

Proper Filing or Recording Officials.

The proper filing or recording official for any particular state may be determined by reference to Part IV of the present volume. The county wherein the vendee resides, which is usually the place of filing, may be determined by reference to Dunn's or Bradstreet's publication. Or, if the county in which the property is located after delivery is the place of filing, the Dunn or Bradstreet publication may again be conveniently used, as the town to which shipment was made can easily be found therein and in connection therewith the county in which such town is located.

If the filing or recording is to be made by an officer of the county or a clerk of a county court, the letter may be directed

to such official at the county seat. When it must be made in a city clerk's office, the letter may be directed to such official in his proper city. The greatest difficulty is encountered where the filing or recording official is a village, town or township clerk. These officials are changed frequently, their address is not always certain, and no publication known to the author gives a list of them. It will be found, however, that a letter directed to the village or town clerk at the place where the particular instrument must be filed or recorded, will almost invariably reach the proper official.

Fees.

Postage stamps may be sent in payment of filing or recording fees when these latter are not in excess of twenty-five cents. Larger amounts if remitted in this form are, however, liable to be refused and are better sent in currency by registered mail, or perhaps more safely, by means of express or post-office orders or drafts. Checks will sometimes be received without question by the filing or recording officials, but not infrequently they are looked upon with disfavor. Also they are usually subject to collection charges, which, if not included in the amount of the check, give rise to dissatisfaction, a request for remittance of these charges, or a refusal of the check itself. Under these conditions checks are not safely employed unless it is known that they will be accepted by the filing or recording officials, or unless the delay incident to their return or to a correspondence in regard to them is not objectionable.

CONDITIONAL CONTRACTS.

The forms of conditional contracts which follow have been found effective and satisfactory in actual use. They may in many cases be used in the shape here presented. In other cases they will serve as suggestions for the drafting of instruments suited to the particular conditions under which they are to be employed.

It will be recognized that the main purpose of a conditional sale contract is to protect the vendor. To do this its terms must of necessity be strongly in his favor, but the protective clauses should not occupy too prominent a place in the instrument or they may strike the vendee as harsh. For this reason the wording and arrangement in some of the following forms intentionally departs from the usual contract construction and especially is this true in the unilateral or one party contracts.

When conditional contracts are employed they are ordinarily used in such numbers as to necessitate a printed form. In the contract forms which follow the variable matter has been reduced to a minimum so that the form when printed will have but a small number of blanks to be filled in at the time the instrument is used. The matter is merely one of convenience but will be appreciated by the salesman who must prepare the form for signature.

CONDITIONAL CONTRACT.

Ithaca, N. Y., May 4, 1907.

To Cayuga Manufacturing Co.,
Auburn, New York.

Please send as soon as convenient one No. 25 "FIRE-PROOF" SAFE, approximate size inside, 25 inches high, 15

inches wide and 11 inches deep, as per your illustrated catalogue or plan on back hereof if any. Necessary alterations allowed. Ship via Lehigh Valley R. R. from Auburn, New York, and rent same to undersigned on the following terms:

Safe to be delivered F. O. B. cars at Auburn, New York, and the rental thereof to be \$85.00, payable \$25.00 in cash on arrival of safe and the balance in four equal instalments at two, four, six and eight months from date of invoice, these deferred payments to be evidenced by rental notes, bearing interest at the rate of 6% from invoice date, which shall also be the date of said notes.

Said rental notes are to be sent you as soon as invoice for safe is received and if they have not been forwarded at the expiration of twenty-five days from date of invoice, the entire rental of said safe as above set forth shall become due and payable, and I agree to accept and pay your draft for the said amount on presentation.

When the full amount of \$85.00 with interest as provided is paid, you are to give me a bill of sale for said safe, and same is to become my property, but it is agreed that the title to said safe shall not pass until said payments have been made in full, but shall remain with you, and on default of payment of said rent, or of any part thereof, you or your agent may take possession of and remove said safe without legal process and all sums then paid shall be retained by you as rental for said safe while it was in my possession, and all exemptions and all claims for damages are hereby waived.

I agree to notify you of any seizure of said safe or of any bankruptcy or settlement with creditors on my part, and in case the said safe shall be seized it is agreed that all instalments of rent previously paid shall be forfeited.

Nothing but shipment, or delivery or actual acceptance in writing shall constitute your acceptance of this contract and same shall not be countermanded, cancelled or annulled by me.

I also hereby expressly state and agree that the foregoing embodies all claims made between us in any way in regard to the said safe and that all claims of verbal or other agreements of any nature not embodied in this contract are hereby waived.

The receipt of a duplicate of this present contract is hereby acknowledged.

Truly yours,

\$85.00.

Morris M. Wilson.

Agents Not Authorized to Make Collections.

CONDITIONAL CONTRACT.

Columbus, Ohio, April 23, 1907.

Howard Walton Safe Co.,

New York City, New York.

Please ship, F. O. B. New York City, to Edward M. Sheldon, Columbus, Ohio, by freight as soon as possible, one No. 5 iron safe, specifications as per your catalogue.

On fulfilment of the above, the undersigned agrees to pay you the sum of Sixty-Five Dollars (\$65.00) as follows: Five Dollars (\$5.00) cash on arrival; balance by monthly payments of Five Dollars (\$5.00) each from date of invoice.

Upon delivery of safe I agree to pay sight draft for Five Dollars (\$5.00) and to execute and deliver to you twelve notes, for Five Dollars (\$5.00) each, to cover the balance, said notes to bear date of invoice and one to be payable each month thereafter until all are paid.

Should there be any failure to pay such draft on presentation or to execute and pay any note or notes for deferred payments as provided herein, it is agreed that the full amount covered by this contract shall at once become due and payable. It is especially agreed that this order shall not

be countermanded and it is further agreed that the title to said safe shall not pass until the purchase price thereof or any judgment for the same is paid in full but that said safe shall remain your property until that time.

In default of any payment you or your agents may take possession of and remove said safe without legal process, and in such case all payments heretofore made by me under this contract shall be deemed and considered as having been made for the use of said safe during the time the same remained in my possession and shall be retained and kept by your said Company as such payment.

The signing and delivery of said promissory notes shall not be deemed nor considered a payment nor a waiver of any term, provision or condition of this contract.

It is agreed that the purchaser of said safe shall not remove same from the premises at 235 Congress Street, Columbus, Ohio, without first having obtained the written consent of the said Howard Walton Safe Company, nor use said safe so as to injure it or impair its use, other than may result from ordinary wear.

This safe is not placed on trial or approval, and no agent is authorized to make or bind the said Howard Walton Safe Company by any agreement, statement or representation of any kind other than contained in this contract. This contract covers all agreements between the parties hereto and receipt of duplicate is hereby acknowledged.

Edward M. Sheldon.

Wynn J. Condon,
Witness.

CONDITIONAL CONTRACT.

Buffalo, New York, April 23, 1907.

Howard Walton Safe Company,
New York City, New York.

Please ship to undersigned at Buffalo, New York, as soon as possible, one iron safe, approximate size inside, 35 inches high, 25 inches wide and 20 inches deep.

In consideration of same the undersigned agrees to pay you \$150.00, being the price of said safe F. O. B. Buffalo, New York, on the following terms: \$25.00 cash on signing this order; \$25.00 cash on delivery of safe and \$100.00 in notes, being ten of \$10.00 each, to be executed and delivered to you by the undersigned when the safe arrives, said notes to be payable one each month until all are paid. You are authorized to date said notes from date of invoice, as you may elect, either before or after the execution thereof. You are to allow 5% discount for cash settlement if same is made within ten days after arrival of safe.

In case of failure to pay draft for cash payment when presented, or to execute and deliver such notes covering deferred payments, it is agreed that the full amount of the purchase price shall become forthwith due and payable. Should default be made in the payment of any instalment it is agreed that all the remaining instalments shall become forthwith due and payable. In default of any payment, you or your agent may take possession of and remove said safe without legal process and in such case all payments theretofore made by the undersigned, shall be considered as having been made for the use of such safe during the time same remained in the possession of the undersigned and shall be retained by you as payment therefor, and for myself, my successors or assigns I hereby expressly waive the benefit of all provisions of the Lien Laws and Exemption Laws and all rights or causes of action given thereby. In the event of a

refusal to accept said safe when tendered, it is agreed that the sum as above mentioned, less any actual cash payments, shall at once become due and payable. All taxes and assessments levied on said property are to be paid by the undersigned. Any injury to or destruction of the property shall in no manner effect the undersigned's liability for payment on this contract or the notes given thereunder.

It is agreed that the title to said safe shall not pass until purchase price or any judgment for same is paid in full but that said safe shall remain your property until that time. The undersigned expressly agrees not to countermand or attempt to annul this order, which it is expressly understood covers all agreements of every name and nature between the parties.

Douglass H. Mackenzie.

George Whalen,
Witness.

CONDITIONAL CONTRACT.

I, Wallace McGill of Buffalo, New York, have this day received of Willis & Brown, also of Buffalo, New York, the following described property: One Willis & Brown Sewing Machine, No. 17,524, in drop oak cabinet, under an agreement for the conditional sale thereof, which said agreement and every condition and provision thereof is set forth below and is as follows:

The value of the aforesaid property is fixed at \$50.00.

I agree to pay Willis & Brown the sum of \$1.00 cash on signing this contract, and in consideration of having the possession and use of said property I further agree to pay Willis & Brown at their place of business in Buffalo, New York, the further sum of \$1.00 weekly, said payments to be made on Saturday of each week until I have paid the full sum of

\$50.00. When I shall have paid the last mentioned sum in full and any other sums due by reason of my default as hereinafter provided, I am to have title and ownership to said property; Willis & Brown to have full and absolute title and ownership to the above described property until all the payments have been made.

I expressly agree not to remove said property or any part thereof from the premises I now occupy without first obtaining the written consent of said Willis & Brown and to use such property at all times while this contract is in force in a careful and prudent manner.

I further expressly agree that when I fail to make any of the payments herein provided for at the time when the same becomes due or if I fail to keep and perform faithfully each and every one of the terms and conditions of this agreement, Willis & Brown may without notice to me, enter my premises where such property is located and take immediate and full possession thereof and upon said Willis & Brown obtaining said above described property in any manner and holding same for 30 days, any right that I may or might have in said property or to the possession thereof or to payments made thereon shall cease absolutely without a subsequent public sale of said property and without notice of sale or otherwise to me, hereby expressly waiving any action or right of action of any kind whatsoever, which I may have against Willis & Brown growing out of such removal or attempted removal according to the aforesaid agreement, or arising by reason of such repossession and retention of said goods by said Willis & Brown without subsequent public sale thereof and notice to me.

I hereby agree to pay any and all charges and expenses including a reasonable attorney fee incurred in taking possession of said property or in collecting said bill in case of my default.

I hereby expressly and solemnly state I am 21 years and upwards of age.

In Witness Whereof on this 23rd day of April, 1907, I have hereunto subscribed my name and affixed my seal to this agreement and a duplicate hereof, one of which was delivered and retained by me.

William H. Verbeck,
Witness.

Wallace McGill.
Willis & Brown.

CONDITIONAL CONTRACT AND NOTE.

\$75.00.

Charleston, S. C., April 23, 1907.

I, Seymour W. Doran, promise to pay to Cary Safe Company or Order, Seventy-five Dollars, at their office in Buffalo, New York, in five instalments, namely: Fifteen Dollars on the 23rd day of June, 1907; Fifteen Dollars on the 23rd day of August, 1907; Fifteen Dollars on the 23rd day of October, 1907; Fifteen Dollars on the 23rd day of December, 1907, and Fifteen Dollars on the 23rd day of February, 1908, being the price of one iron safe, and I agree that on default of payment of any of said instalments when due, the full balance of this note remaining unpaid shall thereupon mature and become immediately due and collectable, without further notice or demand. This note to bear interest from date at the rate of 6% per annum. But said sale is conditional, and title to said property remains in said Cary Safe Company until this note and costs are fully paid. And in default of payment of said note, or any part thereof, said property is to be returned to said Cary Safe Company, on demand. If said property or any part thereof be lost, damaged or destroyed before payment in full of the purchase money, the vendee or vendees herein shall in no event be entitled to a rescission of the contract or abatement in the price.

If this note be placed in the hands of an attorney for collection, the subscriber hereby agrees and promises to pay ten per cent. attorney's fees on principal and interest due on same.

Each of us, whether principal, security, guarantor, indorser, or other party hereto, hereby severally waives and renounces each for himself and family, any and all homestead or exemption rights, and any and all exemption of daily, weekly, monthly or yearly wages, or salary of each of us, from the process of garnishment, either of us, or the family of either of us, may have under or by virtue of the constitution or laws of this State, or of any State of the United States as against this debt or any renewal thereof, and each further waives demand, protest and notice of demand, protest and non-payment. Given under the hand and seal of each party.

Seymour W. Doran. (Seal.)
Cary Safe Company,
By Harvey G. Bush,
Asst. Treas.

{ CORPORATE }
{ SEAL. }

Signed, sealed and delivered
in presence of Henry Smith.

CONDITIONAL CONTRACT IN THE FORM OF A NOTE.

\$100.00.

Elmira, N. Y., April 23, 1907.

For value received I, the subscriber, of Elmira, New York, promise to pay to the order of Henry Marsden, of Buffalo, New York, \$100.00 at his office in said city, as follows: Five Dollars cash on signing this order; \$5.00 cash on delivery of the property, and the balance, two dollars per week with legal interest on each of said sums.

The consideration for the payment of the above named amount is the agreement by said Henry Marsden to sell and

deliver to the subscriber at Elmira, New York, one iron safe, the use of which is let to the subscriber and this agreement is made upon the following conditions, namely:

The said safe is and shall remain the property of said Henry Marsden until each and every one of said amounts and interest thereon and any judgment rendered thereon shall be paid in full and in case the subscriber makes default in payment of said amounts or any of them or interest thereon at the time and place above specified, or shall sell, assign or remove, or attempt to encumber, dispose of or remove said safe from the place above mentioned without the written consent of said Henry Marsden, his agents or assigns; or if said Marsden, his agents or assigns shall feel insecure or unsafe, the subscriber shall on demand deliver the property in as good condition as when received, reasonable use or wear excepted, or said Marsden or his agents or assigns shall have the right without notice or demand to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter my premises with or without force or process of law, or wherever the said safe may be, or be supposed to be, and search for same and if found to take possession thereof and in case said Marsden, his agents or assigns shall retake possession of said property, all moneys paid on the purchase price thereof shall belong to said Marsden or his assigns as liquidated damages for non-fulfilment of this contract by the subscriber and for loss in value of said property and for the use and rental thereof while remaining in possession of the subscriber; or should default be made in making any of the said payments as above specified, and should the same remain in arrears and unpaid for the period of 10 days, or should any condition, stipulation or agreement herein contained be violated or not kept by me, then in such case the whole sum remaining unpaid on this agreement shall at the option of said Marsden or his assigns without notice become immediately due and payable and said

Marsden or his assigns may at their option whether they have or have not retaken possession of said property, enforce the payment and collection of the balance remaining unpaid on this agreement and interest thereon.

In case of the payment of each and every said amount and interest thereon or payment of judgment obtained thereon, the full and absolute title of said property shall pass and vest in the subscriber hereto, it being, however, expressly understood that title shall not pass to the subscriber until any and all judgments obtained hereon are paid and satisfied in full. This agreement shall not be binding on said Marsden until accepted and approved by him. This contract has been signed in duplicate and a copy thereof delivered to the subscriber, the receipt of which is hereby acknowledged.

Samuel Wellman.

Harrison McCall,
Witness.

Accepted,
Henry Marsden.

For value received I hereby guarantee the payment of the above contract in all respects when due and I hereby make same a charge on my separate estate.

Mary H. Wellman.

BAILMENT CONTRACTS.

In these contracts the form of a lease is preserved, the stipulation being that the property is on rental. In the first form the instrument is a lease pure and simple without provision for the transfer of title at the termination of the rental period. In the other bailment contracts given under the present heading the provision is included that upon full payment of all the rentals provided for by the contract, the title to the property is transferred to the lessee.

BAILMENT CONTRACT.

This certifies that I, John Mackay, now residing at 25 Main St., in the city of Newark, New Jersey, have rented and received from the Cary Safe Co. of Buffalo, New York, one iron safe, all in good order and for the use of which I agree to pay rent as follows: \$10.00 cash on delivery of this agreement, the receipt whereof is hereby acknowledged and accepted as payment of the first month's rent only, and then at the rate of \$5.00 per month payable in advance on the 1st day of each month thereafter for ten months at the office of the Cary Safe Co. in Buffalo, New York, without notice or demand. But if default shall be made in any of said payments or if I shall sell, or offer to sell, or remove, or attempt to remove said safe from my aforesaid residence without written consent of Cary Safe Company, then in that case, or if otherwise at the expiration of the time for which said safe is rented, I will return and deliver the same to said Company in good order save reasonable wear, and said Company or its agents may assume actual possession thereof and I hereby authorize and empower the said Company or its agents to enter the premises wherever said safe may be and take and carry same away, hereby waiving any action for trespass or damages therefor and disclaiming any right of resistance thereto and I also waive all rights of homestead and other exemptions of said state against this obligation.

Witness my hand this 23rd day of April, 1907.

John Mackay.

Attest,

Isaac Hummell.

BAILMENT CONTRACT.

THIS CERTIFIES, that Henry D. Fisher, the undersigned, now residing at 42 Lawrence Place, Buffalo, New York, has received of the S. O. Barnum Co., one motor bicycle, returnable on demand all in good order and repair and valued at One Hundred and Fifty Dollars (\$150.00), which the undersigned agrees to use with care and keep in like good order and for the use of which the undersigned agrees to pay as follows:

On delivery of said property, Twenty Dollars (\$20.00), which shall be accepted as payment for rent until January 1, 1907, and then at the rate of Ten Dollars (\$10.00) per month payable in advance on the first day of each and every month at the office of S. O. Barnum Co., Buffalo, New York, without notice or demand.

If default be made in any of the payments or in case the undersigned shall sell, offer to sell, remove, or attempt to remove said property from under his custody or control without the consent in writing of the said S. O. Barnum Co., then in that case this lease shall cease and terminate and said S. O. Barnum Co., or its agent, is hereby authorized to resume actual possession of said property wherever same may be and to take and carry the same away and the undersigned hereby waives any action for trespass or damages therefor.

It is further agreed that the undersigned may at any time within said rental period purchase said property by paying the above named valuation therefor and in that case the rent theretofore paid shall be deducted from such purchase price. If any instalment of rent is not paid when due or said property is not returned upon demand, undersigned agrees to pay an attorney's fee of Ten Dollars (\$10.00) in case this lease is placed in the hands of an attorney for collection of said rent or to recover possession of said property.

Henry D. Fisher.

Dated at Buffalo, New York, October 9, 1906.

Attest, Lawrence Halliday.

In Pennsylvania a conditional contract of sale, except for railroad equipment, will not be upheld by the courts where the rights of third parties have intervened. For this reason a bailment or lease form should be used. The following form has proved effective and satisfactory and may be safely used.

BAILMENT CONTRACT FOR PENNSYLVANIA.

Bradford, Pa., January 3rd, 1907.

H. K. Mfg. Co.,

Buffalo, N. Y.

Please send, as soon as convenient, one No. 5 "FIRE-PROOF" SAFE, approximate size inside, 17 inches high, 12 inches wide, 11 inches deep, as per your illustrated catalogue, or plan on back hereof, if any. Necessary alterations allowed. Ship via Penn. R. R., F. O. B. cars at Buffalo, New York, and rent same to undersigned.

This lease shall be for the term of ten (10) months from date, with rent payable as follows: Fifteen Dollars (\$15.00) on delivery of safe as rent for first two months; balance Ten Dollars (\$10.00) per month thereafter on the day of the month corresponding to the date of this lease.

It is agreed that said safe shall not be sublet to any other person, without your consent in writing, and shall be surrendered to you at the expiration of this lease, in as good condition as when taken, ordinary wear excepted; provided, however, if said rent shall be promptly and fully paid, whenever such payments shall amount to the sum stated below, the undersigned may elect to become owner of said safe.

If any portion of said rent shall not be paid as agreed, or if any of the provisions of this lease be violated, all rent shall become due and payable forthwith, and you or your agent may take possession of and remove said safe, without

legal process. All rent paid shall be retained by you as hire for said safe. All exemptions and all claims for damages are hereby waived. Nothing but shipment or delivery or actual acceptance in writing, shall constitute your acceptance of this lease, and it is agreed same shall not be cancelled or annulled by the undersigned. Receipt of a duplicate hereof is hereby acknowledged. The foregoing embodies all agreements between the parties; it being understood that all claims of verbal or other agreements are hereby waived. It is understood that agents are not authorized to collect.

Truly yours,

George L. Hodgson.

Amount \$75.00.

Accepted,

H. K. Mfg. Co.,

By Henry Smith,

President.

Where a more formal contract is desired for use in Pennsylvania the following may be employed. Blanks will, of course, be left in the form when printed for variable matter such as name of lessee, terms of payment, etc.

BAILMENT CONTRACT.

INDENTURE made this 21st day of May, 1907, between the Cary Safe Company of Buffalo, New York, hereinafter termed the lessor, and Hermann Gillette of Lancaster, Pennsylvania, hereinafter called the lessee.

The said lessor doth hereby lease unto the said lessee one No. 5 "FIRE-PROOF" SAFE of the following approximate dimensions: height, 17 inches; width, 12 inches; depth, 11 inches, the said lease to be for the term of ten months

from the date hereof and rental for said safe to be paid by the said lessee as follows: On delivery of safe, fifteen dollars (\$15.00), which shall be the rental of said safe for the first two months of the present lease, and ten dollars (\$10.00) on the 21st day of each and every month thereafter until the expiration of the term for which said safe is leased; delivery of said safe to be made F. O. B. on cars at Buffalo, New York.

The said lessee hereby agrees to surrender the said safe at the expiration of this lease in as good condition as when received by him, ordinary wear excepted, provided, however, that if the rentals as herein specified and set forth shall be fully and promptly paid, the said lessee may, whenever the said rental payments aggregate the sum of seventy-five dollars (\$75.00), elect to become owner of said safe and if said lessee so elects and so notifies the said lessor, this present lease shall then cease and determine and the said safe shall without further payment under this present indenture become and be the property of the said lessee hereunder.

The said lessee further agrees that said safe shall not be sublet to any other person or persons during the life of this lease without the written consent of the lessor. Also, if any portion of said rent shall not be paid at the times and in the amounts hereinbefore set forth, or if any of the provisions of this lease be violated, the rental of said safe for the full period of this lease shall become due and payable forthwith, and the said lessor through its officers or agents may take possession of and remove said safe without legal process and the said lessee hereby waives all exemptions and all claims for damages and agrees that all rent paid by him up to the time of the repossession of said safe by the lessor shall be retained by said lessor as hire and payment for the lessee's use of said safe.

It is further agreed that the present lease is not effective as to the said lessor until formally executed by the said les-

sor or the agent of said lessor and the said lease shall not be subject to cancellation or annulment by the said lessee.

It is further expressly understood and agreed that all claims of any verbal or other agreements respecting the said safe shall be and hereby are waived and that all agreements between the parties are embodied in the present indenture of which the said lessee hereby acknowledges the receipt of a duplicate.

In Witness Whereof, the parties hereunto have respectively affixed their legal signatures and seals on the day and year first above mentioned.

CARY SAFE COMPANY,
By HARVEY G. BUSH,
Asst. Treasurer.

HERMANN GILLETTE. [L. S.]

{ CORPORATE }
{ SEAL. }

Agents are Not Authorized to Collect Rentals.

RELEASES.

In a few states the laws require that a contract of conditional sale shall be released or discharged immediately upon payment, whether requested by the vendee or not, and assess a penalty for failure so to do. In these states the law will, of course, be followed to the letter but elsewhere it seems hardly necessary to send a formal release of the contract when payment is made unless such release is requested by the vendee or some other proper party.

If a release is requested it will usually be found sufficient to send it direct to the party, requesting him to place the same on file, or cause it to be recorded as necessary. The party

receiving the release or discharge will usually do this, thus saving to the vendor the cost and trouble involved in the filing or recording.

Where vendor is a corporation located in New York and the contract of conditional sale has been recorded, though in another state, the following form of release may be used. If the vendor resides in another state the acknowledgment should comply with the laws of that state. Where the release is to be filed in New York State it seems necessary that it should be acknowledged.

RELEASE WHEN VENDOR IS A CORPORATION.

Cary Safe Company, a corporation duly organized under the laws of the State of New York and having its principal place of business at Buffalo, New York, does hereby certify that the provisions of a certain conditional contract for the leasing of an iron safe heretofore given by Henry Smith of Lexington, Kentucky, to said Cary Safe Company have been satisfied and the amount due thereunder paid in full, and the County Clerk of Fayette County, Kentucky, is hereby directed to cancel and discharge from record the said contract recorded on or about January 1, 1907.

Dated at Buffalo, N. Y.,

April 23, 1907.

{ CORPORATE }
 { SEAL. }

Cary Safe Company,
 By Harvey G. Bush,
 Asst. Treas.

STATE OF NEW YORK, }
 COUNTY OF ERIE. } ss.:

On this 23rd day of April, in the year 1907, before me personally came Harvey G. Bush, to me known, who being by me duly sworn, deposes and says that he is the Assistant Treasurer of the Cary Safe Company, the corporation de-

scribed in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to the said instrument was such corporate seal and that it was affixed by order of the Board of Directors of said corporation, and that he signed the corporate name thereto by like order, as Assistant Treasurer of said corporation.

Harvey G. Bush.

Sworn to before me this 23rd day
of April, 1907.

Henry W. Carr,

{ NOTARIAL }
{ SEAL. }

Notary Public in and
for Erie Co., N. Y.

A form of individual release when the contract of conditional sale has been filed, is as follows:

RELEASE OF FILED INSTRUMENT.

I, Hiram H. Bacon of Buffalo, New York, do hereby certify that the provisions of a certain conditional contract for the sale of an iron safe heretofore given by Oscar A. Simon of Topeka, Kansas, to me, have been satisfied and the amount due thereunder paid in full, and the Register of Deeds for Shawnee County, Kansas, is hereby directed to cancel and discharge from record the said contract filed in his office on or about January 1, 1907.

Dated at Buffalo, N. Y.,

April 23, 1907.

Hiram H. Bacon.

If the contract of conditional sale has been recorded, the release must be acknowledged and its form varied to meet the conditions, as in the following:

RELEASE OF RECORDED INSTRUMENT.

I, David W. Van Hoesen of Cortland, New York, do hereby certify that the provisions of a certain conditional contract for the sale of an iron safe heretofore given by Orris U. Kellogg of Davenport, Iowa, to me, have been satisfied and the amount due thereunder paid in full, and the County Recorder of Scott County, Iowa, is hereby directed to cancel and discharge from record the said contract filed in his office on or about January 4, 1905.

David W. Van Hoesen.

Dated at Cortland, N. Y.,
April 23, 1907.

STATE OF NEW YORK, }
COUNTY OF CORTLAND. } ss.:

On this 23rd day of April, 1907, before me, the Subscriber, personally came David W. Van Hoesen of Cortland, New York, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged that he executed the same.

Edwin L. Duffy,

{ NOTARIAL }
{ SEAL. }

Notary Public in and
for Cortland Co., N. Y.

Where vendor is a corporation and the contract has been filed, the following form of release may be used.

RELEASE OF FILED INSTRUMENT.

Cary Safe Company, a corporation duly organized under the laws of the State of New York and having its principal place of business at Buffalo, New York, does hereby certify that the provisions of a certain conditional contract for the

sale of an iron safe heretofore given by William L. Fox of Pierre, South Dakota, to said Cary Safe Company, have been satisfied and the amount due thereunder paid in full, and the Recorder of Deeds for Hughes County, South Dakota, is hereby directed to cancel and discharge from record the said contract filed in his office on or about December 20, 1906.

In Witness Whereof, the said Cary Safe Company has caused this instrument to be executed this 23rd day of April, 1907.

Cary Safe Company,
By Harvey G. Bush,
Asst. Treas.

Where a contract has been filed but not recorded it is not ordinarily necessary to affix the corporate seal to the release.

MISCELLANEOUS FORMS.

LETTER TO RECORDING OR FILING OFFICER.

Village ~~of~~ Town Clerk, City of Old Town, County of Penobscot, State of Maine:

Dear Sir: Enclosed please find contract of J. F. Curley, which we desire placed on file in your office, and we hand you forty cents in stamps as a fee for such services. We also enclose a stamped envelope, and would ask you to kindly advise us, at once, date above was placed on file, and greatly oblige,

Yours truly,

CARY SAFE COMPANY,
Per S. W. D.

Please reply on this sheet.

OATH TO COPY OF CONTRACT.

STATE OF NEW YORK, }
COUNTY OF ERIE. } s.s.:

Jacob Truxas, being duly sworn, says the within contract is a true copy of the original.

JACOB TRUXAS.

Subscribed and sworn to before me this 7th day of May,
1907.

HENRY W. CARR,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

OATH TO COPY OF CONTRACT.

I Hereby Certify within to be a true copy of original contract.

JULIA S. WILLIS.

Sworn and subscribed before me this 7th day of May,
1907.

HENRY W. CARR,
Notary Public, etc.

{ NOTARIAL }
{ SEAL. }

APPENDIX.

DEFINITION OF TERMS USED.

ACKNOWLEDGMENT

The act by which a party to an instrument avows before a notary public or other authorized officer that he executed the same. The term is also applied to the certificate of such officer that the party has so avowed his execution of the instrument. This certificate or acknowledgment is written on or attached to the instrument and is prima facie evidence of its due execution.

An instrument must usually be acknowledged before it will be admitted to public registry or record. Acknowledgment is also necessary to some instruments before they are legally effective.

ACTION

The prosecution of some demand or cause in a court of justice. A suit in a court.

AFFIDAVIT

A signed statement in writing, sworn to before an officer authorized to administer an oath.

AGENT OR ATTORNEY

A person authorized to act for another.

ASSIGNEE

One to whom some right in property is assigned or transferred.

ASSIGNMENT	A making over or transfer of personal property for a consideration.
ASSIGNOR	One who makes some transfer of property to an assignee.
ATTACHMENT	The legal process by which property is taken into the custody of the law and held to satisfy any judgment which may be obtained later on against the owner of such property.
ATTESTED	Signed by one or more subscribing witnesses.
AUTHENTICATED COPY	One which has been compared with the original by a county clerk or recorder or other like officer, and is declared by him under his seal to be an exact copy.
BAILEE	The person who receives property under a bailment.
BAILMENT	The transfer of possession of personal property for a limited time, as in a loan, a pledge, a letting for hire, a deposit of property for storage. In bailment there is always the agreement, express or implied, that the property be returned when the purpose for which it was delivered has been fulfilled.
BAILOR	The person who delivers property under a bailment.
BREACH OF CONTRACT	That act or failure to act by which the terms of a contract are violated or are not complied with.

CERTIFIED COPY As used in this work the expression means a copy to which some person has made oath that it is a correct copy of the original.

CHATTEL MORTGAGE A lien given upon personal property *by the owner* as security for the payment of a debt or for the performance of some other obligation. Upon default such lien may be perfected into an absolute title by foreclosure and sale.

CITATION As used in this work the word means the authority, either statute law or court decision, upon which the author relies as establishing the rule laid down on any subject.

CONDITIONAL CONTRACT OF SALE The written instrument by which the agreements of a conditional sale are evidenced.

CONDITIONAL SALE That form of contract by which, while the title and ownership of property rest in one person, called the vendor, it is agreed that upon the payment of a certain sum of money or the performance of other certain specified acts by or on behalf of another person, called the vendee, the title and ownership of such property shall pass from the vendor to the vendee.

CONVERSION The unauthorized assumption or exercise of acts of ownership over the personal property of another.

CRIME

As defined by New York law, a crime is an act or omission forbidden by law and punishable upon conviction by

(1) Death, or (2) imprisonment, or (3) fine, or (4) removal from office, or (5) disqualification to hold any office of trust, honor or profit under the state, or (6) other penal discipline.

Crime is either a felony or a misdemeanor. Felony is a crime which is or may be punishable by either death or imprisonment in a state prison. Misdemeanor is any other crime.

DECLARATION

As used in this work, means a formal statement, usually required to be in writing.

DEMURRER

An allegation in an action admitting the preceding pleading to be true, but insisting that the facts as set forth in said pleadings are insufficient in law to require an answer or constitute a cause of action.

DISCHARGE

As used in this work the word refers to the act or instrument by which the lien of a filed or recorded contract of conditional sale is relinquished or surrendered so that it is no longer an encumbrance upon the property.

EMBEZZLEMENT

The fraudulent appropriation of the property of another by one who is entrusted with its possession.

EXECUTED	As applied to an instrument, means that the signing, or signing and acknowledgment has been completed.
EXECUTION	As used in this work, means the writ or authority by virtue of which the judgment of a court is enforced.
EXECUTORY	As used in this work, means not completed, unfinished.
FILING	As used in this work, refers to the act by which the original contract of conditional sale or a true copy, or a memorandum thereof, is placed in the custody of the filing officer. The names of the parties to such contract are indexed in a book but the text or contents of such contract is not written out in any record book.
INNOCENT THIRD PARTY	As used in this work, the expression means a person who, paying a valuable and adequate consideration therefor, buys or takes a lien on property conditionally sold without knowledge sufficient to put him on enquiry as to the true status of such property. So also "a bona fide purchaser for value."
INSTRUMENT	As used in this work the word means a written agreement or any formal document.
INTERVENE	The act by which an interested person not already made a party thereto, asserts his right to be heard in a legal proceeding with others.

JUDGMENT

The final decision by a court of the matters at issue in a particular case.

**JUDICIAL
DETERMINATION**

As used in this work, the expression means the decision of a court as expressed in a judgment.

LARCENY

The felonious taking and carrying away of the goods or property of another. When the property so taken has a value equal to or more than a certain amount fixed by statute and varying in the different states, it is known as grand larceny. When the value is less than this amount, the offense is known as petty larceny.

LEASE (Noun)

The agreement whereby the possession and use of property is transferred for a time for compensation.

LEASE (Verb)

To give another temporary possession and use of property for compensation.

LESSEE

The person who leases property from another.

LESSOR

The person who leases property to another.

LEVY

The taking or seizure of property under an execution to satisfy a judgment.

LIEN

A charge imposed upon specific property by which it is made security for the payment of a debt or the performance of an act.

MAKES OATH	Swears to or affirms.
MISDEMEANOR	The common understanding of the term is a small or petty crime. (See Crime.)
MORTGAGE	(See Chattel Mortgage.)
MORTGAGEE	The person to whom a mortgage is given.
MORTGAGOR	The person giving or executing a mortgage.
NEGOTIABLE INSTRUMENT	<p>An instrument to be negotiable must conform to the following requirements:</p> <ol style="list-style-type: none"> 1. It must be in writing and signed by the maker or drawer. 2. Must contain an unconditional promise or order to pay a sum certain in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to order or bearer, and 5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. Negotiable Instruments Law (§ 20) of the State of New York.
NEGOTIABLE PAPER	This term includes "all those instruments which are transferable by indorsement or delivery, so as to vest in the transferee the legal title and enable him to maintain an action on the instrument in his own name."

PLEDGE

A bailment or delivery of goods by a debtor to his creditor to be kept until the debt is discharged or until the pledgee is entitled to dispose of the property to satisfy the debt.

PLEDGEE

The party to whom delivery is made under the pledge.

PLEDGOR

The party making the delivery under a pledge.

PRIVILEGE

A right which the nature of a debt gives to a certain creditor entitling him to be preferred before other creditors.

**PRIVILEGED
DEBT**

A debt, the nature of which gives it precedence in payment over other debts.

**PROOF
BY WITNESS**

The verification of an instrument by a subscribing witness, who, before a notary public or other like officer, swears to the due execution of such instrument and to the fact that he signed the same as a subscribing witness. Such proof in many states entitles the contract to be filed or recorded, as the case may be, without acknowledgment by the vendee in person.

**PURCHASER
FOR VALUE**

(See Innocent Third Party.)

RECORDING

The act by which the proper officer receives into his custody any paper or instrument entitled to be recorded and does thereafter cause the text of such paper to be transcribed into the book or books kept in his office for that purpose. Recording also includes indexing the names of the parties for ready reference.

REDEMPTION,
RIGHT OF

The privilege enjoyed under some circumstances by a party whose property has been sold, to redeem or repurchase same within an expressly limited time after such sale.

RELEASE

The act or writing by which some claim or interest is surrendered to another. (See Discharge.)

REPLEVIN

Is an action for the recovery of possession of personal property wrongfully taken or detained, with or without the damages which the wrongful taking or detention has occasioned.

SATISFACTION

The payment or cancellation of a legal debt or demand.

STATUTE

A law passed by a legislative body.

SUBSCRIBING
WITNESS

A person who, being present when a contract or instrument in writing is executed, signs his name as a witness thereto by permission or request.

TENDER

The offer of money in satisfaction of a debt, by producing and offering the amount to the creditor or party claiming, and stating verbally a willingness to pay.

THIRD PARTIES

As used in this work, the term includes all those persons, companies or corporations other than the parties to a conditional contract of sale, who become in any manner interested in the property sold under such contract, either by purchase of same from the vendee, or by accepting a mortgage or other like lien upon it, or in having the said property or the proceeds of same applied to payment of their debts.

TITLE

Signifies the means whereby a person's right to property is established. It is the foundation on which rests the ownership of property.

TRUSTEE
IN BANKRUPTCY

A person chosen by the creditors with the approval of the bankruptcy court, whose duty it is to administer the estate of the bankrupt.

VALID

Legal or enforceable.

VENDEE

The purchaser or buyer.

VENDOR

The seller.

WAIVE

As used in this volume, to intentionally relinquish or abandon a known right.

1/10/01

